

CATEGORY II CONCESSION CONTRACT

UNITED STATES DEPARTMENT OF THE INTERIOR

NATIONAL PARK SERVICE

Rock Creek Park

Non-motorized Vessel Rental and Storage

CONCESSION CONTRACT NO. TC-ROCR004-12

[Name of Concessioner]

3500 K. St., NW
Washington, DC 20007
Phone: (TBD)

Covering the Period (TBD) through December 31, 2014¹

The effective date of the Contract is subject to change prior to contract award if determined necessary by the Service due to transfer timing issues.

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IDENTIFICATION OF THE PARTIES

THIS CONTRACT is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the National Capital Region, (hereinafter referred to as the "Director"), and Concessioner, a Corporation organized and existing under the laws of Washington, DC, (hereinafter referred to as the "Concessioner"):

WITNESSETH:

THAT WHEREAS, Rock Creek Park is administered by the Director as a unit of the national park system to conserve the scenery and the natural and historic objects and the wildlife therein, and to provide for the public enjoyment of the same in such manner as will leave such Area unimpaired for the enjoyment of future generations; and

WHEREAS, to accomplish these purposes, the Director has determined that certain visitor services are necessary and appropriate for the public use and enjoyment of the Area and should be provided for the public visiting the Area; and

WHEREAS, the Director desires the Concessioner to establish and operate these visitor services at reasonable rates under the supervision and regulation of the Director; and

WHEREAS, the Director desires the Concessioner to conduct these visitor services in a manner that demonstrates sound environmental management, stewardship, and leadership;

NOW, THEREFORE, pursuant to the authority contained in the Acts of August 25, 1916 (16 U.S.C. 1, 2-4), and November 13, 1998 (Pub. L. 105-391), and other laws that supplement and amend the Acts, the Director and the Concessioner agree as follows:

SEC. 1. TERM OF CONTRACT

This Concession Contract No. TC-ROCR004-12 ("Contract") shall be effective as of (TBD) , and shall be for the term of approximately two (2) years until its expiration on December 31, 2014 .

SEC. 2. DEFINITIONS

The following terms used in this Contract will have the following meanings, which apply to both the singular and the plural forms of the defined terms:

(a) "Applicable Laws" means the laws of Congress governing the Area, including, but not limited to, the rules, regulations, requirements and policies promulgated under those laws (e.g., 36 CFR Part 51), whether now in force, or amended, enacted or promulgated in the future, including, without limitation, federal, state and local laws, rules, regulations, requirements and policies governing nondiscrimination, protection of the environment and protection of public health and safety.

(b) "Area" means the property within the boundaries of Rock Creek Park.

(c) "Best Management Practices" or "BMPs" are policies and practices that apply the most current and advanced means and technologies available to the Concessioner to undertake and maintain a superior level of environmental performance reasonable in light of the circumstances of the operations conducted under this Contract. BMPs are expected to change from time to time as technology evolves with a goal of sustainability of the Concessioner's operations. Sustainability of operations refers to operations that have a restorative or net positive impact on the environment.

(d) "Concession Facilities" shall mean all Area lands assigned to the Concessioner under this Contract and all real property improvements assigned to the Concessioner under this Contract. The United States retains title and ownership to all Concession Facilities.

(e) "Days" shall mean calendar days.

(f) "Director" means the Director of the National Park Service, acting on behalf of the Secretary of the Interior and the United States, and his duly authorized representatives.

(g) "Exhibit" or "Exhibits" shall mean the various exhibits, which are attached to this Contract, each of which is hereby made a part of this Contract.

(h) "Gross receipts" means the total amount received or realized by, or accruing to, the Concessioner from all sales for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the rights granted by this Contract, including gross receipts of subconcessioners as herein defined, commissions earned on contracts or agreements with other persons or companies operating in the Area, and gross receipts earned from electronic media sales, but excluding:

- (1) Intracompany earnings on account of charges to other departments of the operation (such as laundry);
- (2) Charges for employees' meals, lodgings, and transportation;
- (3) Cash discounts on purchases;
- (4) Cash discounts on sales;
- (5) Returned sales and allowances;
- (6) Interest on money loaned or in bank accounts;
- (7) Income from investments;
- (8) Income from subsidiary companies outside of the Area;
- (9) Sale of property other than that purchased in the regular course of business for the purpose of resale;
- (10) Sales and excise taxes that are added as separate charges to sales prices, gasoline taxes, fishing license fees, and postage stamps, provided that the amount excluded shall not exceed the amount actually due or paid government agencies;
- (11) Receipts from the sale of handicrafts that have been approved for sale by the Director as constituting authentic American Indian, Alaskan Native, Native Samoan, or Native Hawaiian handicrafts.

All monies paid into coin operated devices, except telephones, whether provided by the Concessioner or by others, shall be included in gross receipts. However, only revenues actually received by the Concessioner from coin-operated telephones shall be included in gross receipts. All revenues received from charges for in-room telephone or computer access shall be included in gross receipts.

(i) "Gross receipts of subconcessioners" means the total amount received or realized by, or accruing to, subconcessioners from all sources, as a result of the exercise of the rights conferred by a subconcession contract. A subconcessioner will report all of its gross receipts to the Concessioner without allowances, exclusions, or deductions of any kind or nature.

(j) "Subconcessioner" means a third party that, with the approval of the Director, has been granted by a concessioner rights to operate under a concession contract (or any portion thereof), whether in consideration of a percentage of revenues or otherwise.

(k) "Superintendent" means the manager of the Area.

(l) "Visitor services" means the accommodations, facilities and services that the Concessioner is required and/or authorized to provide by Section 3(a) of this Contract.

SEC. 3. SERVICES AND OPERATIONS

(a) Required and Authorized Visitor Services

During the term of this Contract, the Director requires and authorizes the Concessioner to provide the following visitor services for the public within the Area:

(1) Required Visitor Services. The Concessioner is required to provide the following visitor services during the term of this Contract:

	Service
i.	Dry storage of non-motorized vessels
ii.	Non-motorized vessel rental

(2) Authorized Visitor Services. The Concessioner is authorized but not required to provide the following visitor services during the term of this Contract:

	Service
i.	Vending machine sale of water and non-alcoholic beverages
ii.	Incidental retail
iii.	Instruction

(b) Operation and Quality of Operation

The Concessioner shall provide, operate and maintain the required and authorized visitor services and any related support facilities and services in accordance with this Contract to such an extent and in a manner considered satisfactory by the Director. Except for any such items that may be provided to the Concessioner by the Director, the Concessioner shall provide the plant, personnel, equipment, goods, and commodities necessary for providing, operating and maintaining the required and authorized visitor services in accordance with this Contract. The Concessioner's authority to provide visitor services under the terms of this Contract is non-exclusive.

(c) Operating Plan

The Director, acting through the Superintendent, shall establish and revise, as necessary, specific requirements for the operations of the Concessioner under this Contract in the form of an Operating Plan (including, without limitation, a risk management program, that must be adhered to by the Concessioner). The initial Operating Plan is attached to this Contract as Exhibit A. The Director in his discretion, after consultation with the Concessioner, may make reasonable modifications to the initial Operating Plan that are in furtherance of the purposes of this Contract and are not inconsistent with the terms and conditions of the main body of this Contract.

(d) Merchandise and Services

(1) The Director reserves the right to determine and control the nature, type and quality of the visitor services described in this Contract, including, but not limited to, the nature, type, and quality of merchandise, if any, to be sold or provided by the Concessioner within the Area.

(2) All promotional material, regardless of media format (i.e. printed, electronic, broadcast media), provided to the public by the Concessioner in connection with the services provided under this Contract must be approved in writing by the Director prior to use. All such material will identify the Concessioner as an authorized Concessioner of the National Park Service, Department of the Interior.

(3) The Concessioner, where applicable, will develop and implement a plan satisfactory to the Director that will assure that gift merchandise, if any, to be sold or provided reflects the purpose and significance of the Area, including, but not limited to, merchandise that reflects the conservation of the Area's resources or the Area's geology, wildlife, plant life, archeology, local Native American culture, local ethnic culture, and historic significance.

(e) Rates

All rates and charges to the public by the Concessioner for visitor services shall be reasonable and appropriate for the type and quality of facilities and/or services required and/or authorized under this Contract. The Concessioner's rates and charges to the public must be approved by the Director in accordance with Applicable Laws and guidelines promulgated by the Director from time to time.

(f) Impartiality as to Rates and Services

(1) Subject to Section (f)(2) and (f)(3), in providing visitor services, the Concessioner must require its employees to observe a strict impartiality as to rates and services in all circumstances. The Concessioner shall comply with all Applicable Laws relating to nondiscrimination in providing visitor services to the public including, without limitation, those set forth in Exhibit B.

(2) The Concessioner may grant complimentary or reduced rates under such circumstances as are customary in businesses of the character conducted under this Contract. However, the Director reserves the right to review and modify the Concessioner's complimentary or reduced rate policies and practices as part of its rate approval process.

(3) The Concessioner will provide Federal employees conducting official business reduced rates for lodging, essential transportation and other specified services necessary for conducting official business in accordance with guidelines established by the Director. Complimentary or reduced rates and charges shall otherwise not be provided to Federal employees by the Concessioner except to the extent that they are equally available to the general public.

SEC. 4. CONCESSIONER PERSONNEL

(a) Employees

(1) The Concessioner shall provide all personnel necessary to provide the visitor services required and authorized by this Contract.

(2) The Concessioner shall comply with all Applicable Laws relating to employment and employment conditions, including, without limitation, those set forth in Exhibit B.

(3) The Concessioner shall ensure that its employees are hospitable and exercise courtesy and consideration in their relations with the public. The Concessioner shall have its employees who come in direct contact with the public, so far as practicable, wear a uniform or badge by which they may be identified as the employees of the Concessioner.

(4) The Concessioner shall establish pre-employment screening, hiring, training, employment, termination and other policies and procedures for the purpose of providing visitor services through its employees in an efficient and effective manner and for the purpose of maintaining a healthful, law abiding, and safe working environment for its employees. The Concessioner shall conduct appropriate background reviews of applicants to whom an offer for employment may be extended to assure that they conform to the hiring policies established by the Concessioner.

(5) The Concessioner shall ensure that its employees are provided the training needed to provide quality visitor services and to maintain up-to-date job skills.

(6) The Concessioner shall review the conduct of any of its employees whose action or activities are considered by the Concessioner or the Director to be inconsistent with the proper administration of the Area and enjoyment and protection of visitors and shall take such actions as are necessary to correct the situation.

(7) The Concessioner shall maintain, to the greatest extent possible, a drug free environment, both in the workplace and in any Concessioner employee housing, within the Area.

(8) The Concessioner shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and in the Area, and specifying the actions that will be taken against employees for violating this prohibition. In addition, the Concessioner shall establish a drug-free awareness program to inform employees about the danger of drug abuse in the workplace and the Area, the availability of drug counseling, rehabilitation and employee assistance programs, and the Concessioner's policy of maintaining a drug-free environment both in the workplace and in the Area.

(9) The Concessioner shall take appropriate personnel action, up to and including termination or requiring satisfactory participation in a drug abuse or rehabilitation program which is approved by a Federal, State, or local health, law enforcement or other appropriate agency, for any employee that is found to be in violation of the prohibition on the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

(b) Employee Housing and Recreation

(1) If the Concessioner is required to provide employee housing under this Contract, the Concessioner's charges to its employees for this housing must be reasonable.

(2) If the visitor services required and/or authorized under this Contract are located in a remote or isolated area, the Concessioner shall provide appropriate employee recreational activities.

SEC. 5. LEGAL, REGULATORY, AND POLICY COMPLIANCE

(a) Legal, Regulatory and Policy Compliance

This Contract, operations thereunder by the Concessioner and the administration of it by the Director, shall be subject to all Applicable Laws. The Concessioner must comply with all Applicable Laws in fulfilling its obligations under this Contract at the Concessioner's sole cost and expense. Certain Applicable Laws governing protection of the environment are further described in this Contract. Certain Applicable Laws relating to nondiscrimination in employment and providing accessible facilities and services to the public are further described in this Contract.

(b) Notice

The Concessioner shall give the Director immediate written notice of any violation of Applicable Laws by the Concessioner, including its employees, agents or contractors, and, at its sole cost and expense, must promptly rectify any such violation.

(c) How and Where To Send Notice

All notices required by this Contract shall be in writing and shall be served on the parties at the following addresses. The mailing of a notice by registered or certified mail, return receipt requested, shall be sufficient service. Notices sent to the Director shall be sent to the following address:

Superintendent

Rock Creek Park
3545 Williamsburg Lane, NW
Washington, DC 20008-1207

Notices sent to the Concessioner shall be sent to the following address:

(TBD)

SEC. 6. ENVIRONMENTAL AND CULTURAL PROTECTION

(a) Environmental Management Objectives

The Concessioner shall meet the following environmental management objectives (hereinafter "Environmental Management Objectives") in the conduct of its operations under this Contract:

- (1) The Concessioner, including its employees, agents and contractors, shall comply with all Applicable Laws pertaining to the protection of human health and the environment.
- (2) The Concessioner shall incorporate Best Management Practices (BMPs) in its operation, construction, maintenance, acquisition, provision of visitor services, and other activities under this Contract.

(b) Environmental Management Program

- (1) The Concessioner shall develop, document, implement, and comply fully with, to the satisfaction of the Director, a comprehensive written Environmental Management Program (EMP) to achieve the Environmental Management Objectives. The initial EMP shall be developed and submitted to the Director for approval within sixty days of the effective date of this Contract. The Concessioner shall submit to the Director for approval a proposed updated EMP annually.
- (2) The EMP shall account for all activities with potential environmental impacts conducted by the Concessioner or to which the Concessioner contributes. The scope and complexity of the EMP may vary based on the type, size and number of Concessioner activities under this Contract.
- (3) The EMP shall include, without limitation, the following elements:
 - (i) Policy. The EMP shall provide a clear statement of the Concessioner's commitment to the Environmental Management Objectives.
 - (ii) Goals and Targets. The EMP shall identify environmental goals established by the Concessioner consistent with all Environmental Management Objectives. The EMP shall also identify specific targets (i.e. measurable results and schedules) to achieve these goals.
 - (iii) Responsibilities and Accountability. The EMP shall identify environmental responsibilities for Concessioner employees and contractors. The EMP shall include the designation of an environmental program manager. The EMP shall include procedures for the Concessioner to implement the evaluation of employee and contractor performance against these environmental responsibilities.
 - (iv) Documentation. The EMP shall identify plans, procedures, manuals, and other documentation maintained by the Concessioner to meet the Environmental Management Objectives.
 - (v) Documentation Control and Information Management System. The EMP shall describe (and implement) document control and information management systems to maintain knowledge of Applicable Laws and BMPs. In addition, the EMP shall identify how the Concessioner will manage environmental information, including without limitation, plans, permits, certifications, reports, and correspondence.

(vi) Reporting. The EMP shall describe (and implement) a system for reporting environmental information on a routine and emergency basis, including providing reports to the Director under this Contract.

(vii) Communication. The EMP shall describe how the environmental policy, goals, targets, responsibilities and procedures will be communicated throughout the Concessioner's organization.

(viii) Training. The EMP shall describe the environmental training program for the Concessioner, including identification of staff to be trained, training subjects, frequency of training and how training will be documented.

(ix) Monitoring, Measurement, and Corrective Action. The EMP shall describe how the Concessioner will comply with the EMP and how the Concessioner will self-assess its performance under the EMP, at least annually, in a manner consistent with NPS protocol regarding audit of NPS operations. The self-assessment should ensure the Concessioner's conformance with the Environmental Management Objectives and measure performance against environmental goals and targets. The EMP shall also describe procedures to be taken by the Concessioner to correct any deficiencies identified by the self-assessment.

(c) Environmental Performance Measurement

The Concessioner shall be evaluated by the Director on its environmental performance under this Contract, including, without limitation, compliance with the approved EMP, on at least an annual basis.

(d) Environmental Data, Reports, Notifications, and Approvals

(1) Inventory of Hazardous Substances and Inventory of Waste Streams. The Concessioner shall submit to the Director, at least annually, an inventory of federal Occupational Safety and Health Administration (OSHA) designated hazardous chemicals used and stored in the Area by the Concessioner. The Director may prohibit the use of any OSHA hazardous chemical by the Concessioner in operations under this Contract. The Concessioner shall obtain the Director's approval prior to using any extremely hazardous substance, as defined in the Emergency Planning and Community Right to Know Act of 1986, in operations under this Contract. The Concessioner shall also submit to the Director, at least annually, an inventory of all waste streams generated by the Concessioner under this Contract. Such inventory shall include any documents, reports, monitoring data, manifests, and other documentation required by Applicable Laws regarding waste streams.

(2) Reports. The Concessioner shall submit to the Director copies of all documents, reports, monitoring data, manifests, and other documentation required under Applicable Laws to be submitted to regulatory agencies. The Concessioner shall also submit to the Director any environmental plans for which coordination with Area operations are necessary and appropriate, as determined by the Director in accordance with Applicable Laws.

(3) Notification of Releases. The Concessioner shall give the Director immediate written notice of any discharge, release or threatened release (as these terms are defined by Applicable Laws) within or at the vicinity of the Area, (whether solid, semi-solid, liquid or gaseous in nature) of any hazardous or toxic substance, material, or waste of any kind, including, without limitation, building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product.

(4) Notice of Violation. The Concessioner shall give the Director in writing immediate notice of any written threatened or actual notice of violation from other regulatory agencies of any Applicable Law arising out of the activities of the Concessioner, its agents or employees.

(5) Communication with Regulatory Agencies. The Concessioner shall provide timely written advance notice to the Director of communications, including without limitation, meetings, audits, inspections, hearings and other proceedings, between regulatory agencies and the Concessioner related to compliance with Applicable Laws concerning operations under this Contract. The Concessioner shall

also provide to the Director any written materials prepared or received by the Concessioner in advance of or subsequent to any such communications. The Concessioner shall allow the Director to participate in any such communications. The Concessioner shall also provide timely notice to the Director following any unplanned communications between regulatory agencies and the Concessioner.

(e) Corrective Action

(1) The Concessioner, at its sole cost and expense, shall promptly control and contain any discharge, release or threatened release, as set forth in this section, or any threatened or actual violation, as set forth in this section, arising in connection with the Concessioner's operations under this Contract, including, but not limited to, payment of any fines or penalties imposed by appropriate agencies. Following the prompt control or containment of any release, discharge or violation, the Concessioner shall take all response actions necessary to remediate the release, discharge or violation, and to protect human health and the environment.

(2) Even if not specifically required by Applicable Laws, the Concessioner shall comply with directives of the Director to clean up or remove any materials, product or by-product used, handled, stored, disposed, or transported onto or into the Area by the Concessioner to ensure that the Area remains in good condition.

(f) Indemnification and Cost Recovery for Concessioner Environmental Activities

(1) The Concessioner shall indemnify the United States in accordance with Section 11 of this Contract from all losses, claims, damages, environmental injuries, expenses, response costs, allegations or judgments (including, without limitation, fines and penalties) and expenses (including, without limitation, attorneys fees and experts' fees) arising out of the activities of the Concessioner, its employees, agents and contractors pursuant to this section. Such indemnification shall survive termination or expiration of this Contract.

(2) If the Concessioner does not promptly contain and remediate an unauthorized discharge or release arising out of the activities of the Concessioner, its employees, agents and contractors, as set forth in this section, or correct any environmental self-assessment finding of non-compliance, in full compliance with Applicable Laws, the Director may, in its sole discretion and after notice to the Concessioner, take any such action consistent with Applicable Laws as the Director deems necessary to abate, mitigate, remediate, or otherwise respond to such release or discharge, or take corrective action on the environmental self-assessment finding. The Concessioner shall be liable for and shall pay to the Director any costs of the Director associated with such action upon demand. Nothing in this section shall preclude the Concessioner from seeking to recover costs from a responsible third party.

(g) Weed and Pest Management

The Concessioner shall be responsible for managing weeds, and through an integrated pest management program, harmful insects, rats, mice and other pests on Concession Facilities assigned to the Concessioner under this Contract. All such weed and pest management activities shall be in accordance with Applicable Laws and guidelines established by the Director.

(h) Protection of Cultural and Archeological Resources

The Concessioner shall ensure that any protected sites and archeological resources within the Area are not disturbed or damaged by the Concessioner, including the Concessioner's employees, agents and contractors, except in accordance with Applicable Laws, and only with the prior approval of the Director. Discoveries of any archeological resources by the Concessioner shall be promptly reported to the Director. The Concessioner shall cease work or other disturbance which may impact any protected site or archeological resource until the Director grants approval, upon such terms and conditions as the Director deems necessary, to continue such work or other disturbance.

SEC. 7. INTERPRETATION OF AREA RESOURCES

(a) Concessioner Obligations

(1) The Concessioner shall provide all visitor services in a manner that is consistent with and supportive of the interpretive themes, goals and objectives of the Area as reflected in Area planning documents, mission statements and/or interpretive prospectuses.

(2) The Concessioner may assist in Area interpretation at the request of the Director to enhance visitor enjoyment of the Area. Any additional visitor services that may result from this assistance must be recognized in writing through written amendment of Section 3 of this Contract.

(3) The Concessioner is encouraged to develop interpretive materials or means to educate visitors about environmental programs or initiatives implemented by the Concessioner.

(b) Director Review of Content

The Concessioner must submit the proposed content of any interpretive programs, exhibits, displays or materials, regardless of media format (i.e. printed, electronic, or broadcast media), to the Director for review and approval prior to offering such programs, exhibits, displays or materials to Area visitors.

SEC. 8. CONCESSION FACILITIES USED IN OPERATION BY THE CONCESSIONER

(a) Assignment of Concession Facilities

(1) The Director hereby assigns Concession Facilities as described in Exhibit C to the Concessioner for the purposes of this Contract. The Concessioner shall not be authorized to construct any Capital Improvements (as defined in Applicable Laws including without limitation 36 CFR Part 51) upon Area lands. The Concessioner shall not obtain a Leasehold Surrender Interest or other compensable interest in Capital Improvements constructed or installed in violation of this Contract.

(2) The Director shall from time to time amend Exhibit C to reflect changes in Concession Facilities assigned to the Concessioner.

(b) Concession Facilities Withdrawals

The Director may withdraw all or portions of these Concession Facilities assignments at any time during the term of this Contract if:

(1) The withdrawal is necessary for the purpose of conserving, preserving or protecting Area resources or visitor enjoyment or safety;

(2) The operations utilizing the assigned Concession Facilities have been terminated or suspended by the Director; or

(3) Land or real property improvements assigned to the Concessioner are no longer necessary for the concession operation.

(c) Effect of Withdrawal

Any permanent withdrawal of assigned Concession Facilities which the Director or the Concessioner considers to be essential for the Concessioner to provide the visitor services required by this Contract will be treated as a termination of this Contract pursuant to Section 15. No compensation is due the Concessioner in these circumstances.

(d) Right of Entry

The Director shall have the right at any time to enter upon or into the Concession Facilities assigned to the Concessioner under this Contract for any purpose he may deem necessary for the administration of the Area.

(e) Personal Property

(1) Personal Property Provided by the Concessioner. The Concessioner shall provide all personal property, including without limitation removable equipment, furniture and goods, necessary for its operations under this Contract, unless such personal property is provided by the Director as set forth in subsection (e)(2).

(2) Personal Property Provided by the Government. The Director may provide certain items of government personal property, including without limitation removable equipment, furniture and goods, for the Concessioner's use in the performance of this Contract. The Director hereby assigns government personal property listed in Exhibit D to the Concessioner as of the effective date of this Contract. This Exhibit D will be modified from time to time by the Director as items may be withdrawn or additional items added. The Concessioner shall be accountable to the Director for the government personal property assigned to it and shall be responsible for maintaining the property as necessary to keep it in good and operable condition. If the property ceases to be serviceable, it shall be returned to the Director for disposition.

(f) Condition of Concession Facilities

The Concessioner has inspected the Concession Facilities and any assigned government personal property, is thoroughly acquainted with their condition, and accepts the Concession Facilities, and any assigned government personal property, "as is."

(g) Utilities

(1) The Director may provide utilities to the Concessioner for use in connection with the operations required or authorized hereunder when available and at rates to be determined in accordance with Applicable Laws.

(2) If the Director does not provide utilities to the Concessioner, the Concessioner shall, with the written approval of the Director and under any requirements that the Director shall prescribe, secure necessary utilities at its own expense from sources outside the Area.

SEC. 9. MAINTENANCE**(a) Maintenance Obligation**

Subject to the limitations set forth in Section 8(a)(1) of this Contract, the Concessioner shall be solely responsible for maintenance, repairs, housekeeping, and groundskeeping for all Concession Facilities to the satisfaction of the Director.

(b) Maintenance Plan

For these purposes, the Director, acting through the Superintendent, shall undertake appropriate inspections, and shall establish and revise, as necessary, a Maintenance Plan consisting of specific maintenance requirements which shall be adhered to by the Concessioner. The initial Maintenance Plan is set forth in Exhibit E. The Director in his discretion may make reasonable modifications to the Maintenance Plan from time to time after consultation with the Concessioner. Such modifications shall be

in furtherance of the purposes of this Contract and shall not be inconsistent with the terms and conditions of the main body of this Contract.

SEC. 10. FEES

(a) Franchise Fee

(1) For the term of this Contract, the Concessioner shall pay to the Director for the privileges granted under this Contract a franchise fee equal to three percent (3%) of the Concessioner's gross receipts for the preceding year or portion of a year.

(2) Neither the Concessioner nor the Director shall have a right to an adjustment of the fees except as provided below. The Concessioner has no right to waiver of the fee under any circumstances.

(b) Payments Due

(1) The franchise fee shall be due on a monthly basis at the end of each month and shall be paid by the Concessioner in such a manner that the Director shall receive payment within fifteen (15) days after the last day of each month that the Concessioner operates. This monthly payment shall include the franchise fee equal to the specified percentage of gross receipts for the preceding month.

(2) The Concessioner shall pay any additional fee amounts due at the end of the operating year as a result of adjustments at the time of submission of the Concessioner's Annual Financial Report. Overpayments shall be offset against the following year's fees. In the event of termination or expiration of this Contract, overpayments will first be offset against any amounts due and owing the Government and the remainder will be paid to the Concessioner.

(3) All franchise fee payments consisting of \$10,000 or more, shall be deposited by the Concessioner in accordance with Applicable Laws.

(c) Interest

An interest charge will be assessed on overdue amounts for each thirty (30) day period, or portion thereof, that payment is delayed beyond the fifteen (15) day period provided for above. The percent of interest charged will be based on the current value of funds to the United States Treasury as published quarterly in the Treasury Fiscal Requirements Manual. The Director may also impose penalties for late payment to the extent authorized by Applicable Law.

(d) Adjustment of Franchise Fee

(1) The Concessioner or the Director may request, in the event that either considers that extraordinary, unanticipated changes have occurred after the effective date of this Contract, a reconsideration and possible subsequent adjustment of the franchise fee established in this section. For the purposes of this section, the phrase "extraordinary, unanticipated changes" shall mean extraordinary, unanticipated changes from the conditions existing or reasonably anticipated before the effective date of this Contract which have or will significantly affect the probable value of the privileges granted to the Concessioner by this Contract. For the purposes of this section, the phrase "probable value" means a reasonable opportunity for net profit in relation to capital invested and the obligations of this Contract.

(2) The Concessioner or the Director must make a request for a reconsideration by mailing, within sixty (60) days from the date that the party becomes aware, or should have become aware, of the possible extraordinary, unanticipated changes, a written notice to the other party that includes a description of the possible extraordinary, unanticipated changes and why the party believes they have affected or will significantly affect the probable value of the privileges granted by this Contract.

- (3) If the Concessioner and the Director agree that extraordinary, unanticipated changes have occurred, the Concessioner and the Director will undertake good faith negotiations as to an appropriate adjustment of the franchise fee.
- (4) The negotiation will last for a period of sixty (60) days from the date the Concessioner and the Director agree that extraordinary, unanticipated changes occurred. If the negotiation results in agreement as to an adjustment (up or down) of the franchise fee within this period, the franchise fee will be adjusted accordingly, prospectively as of the date of agreement.
- (5) If the negotiation does not result in agreement as to the adjustment of the franchise fee within this sixty (60) day period, then either the Concessioner or the Director may request binding arbitration to determine the adjustment to franchise fee in accordance with this section. Such a request for arbitration must be made by mailing written notice to the other party within fifteen (15) days of the expiration of the sixty (60) day period.
- (6) Within thirty (30) days of receipt of such a written notice, the Concessioner and the Director shall each select an arbiter. These two arbiters, within thirty (30) days of selection, must agree to the selection of a third arbiter to complete the arbitration panel. Unless otherwise agreed by the parties, the arbitration panel shall establish the procedures of the arbitration. Such procedures must provide each party a fair and equal opportunity to present its position on the matter to the arbitration panel.
- (7) The arbitration panel shall consider the written submissions and any oral presentations made by the Concessioner and the Director and provide its decision on an adjusted franchise fee (up, down or unchanged) that is consistent with the probable value of the privileges granted by this Contract within sixty (60) days of the presentations.
- (8) Any adjustment to the franchise fee resulting from this section shall be prospective only.
- (9) Any adjustment to the franchise fee will be embodied in an amendment to this Contract.
- (10) During the pendency of the process described in this section, the Concessioner shall continue to make the established franchise fee payments required by this Contract.

SEC. 11. INDEMNIFICATION AND INSURANCE

(a) Indemnification

The Concessioner agrees to assume liability for and does hereby agree to save, hold harmless, protect, defend and indemnify the United States of America, its agents and employees from and against any and all liabilities, obligations, losses, damages or judgments (including without limitation penalties and fines), claims, actions, suits, costs and expenses (including without limitation attorneys fees and experts' fees) of any kind and nature whatsoever on account of fire or other peril, bodily injury, death or property damage, or claims for bodily injury, death or property damage of any nature whatsoever, and by whomsoever made, in any way connected with or arising out of the activities of the Concessioner, its employees, agents or contractors under this Contract. This indemnification shall survive the termination or expiration of this Contract.

(b) Insurance in General

(1) The Concessioner shall obtain and maintain during the entire term of this Contract at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of this Contract as determined by the Director. The initial insurance requirements are set forth below and in Exhibit F. Any changed or additional requirements that the Director determines necessary must be reasonable and consistent with the types and coverage amounts of insurance a prudent businessperson would purchase

in similar circumstances. The Director shall approve the types and amounts of insurance coverage purchased by the Concessioner.

(2) The Director will not be responsible for any omissions or inadequacies of insurance coverages and amounts in the event the insurance purchased by the Concessioner proves to be inadequate or otherwise insufficient for any reason whatsoever.

(3) At the request of the Director, the Concessioner shall at the time insurance is first purchased and annually thereafter, provide the Director with a Certificate of Insurance that accurately details the conditions of the policy as evidence of compliance with this section.

The Concessioner shall provide the Director immediate written notice of any material change in the Concessioner's insurance program hereunder, including without limitation, cancellation of any required insurance coverages.

(c) Commercial Public Liability

(1) The Concessioner shall provide commercial general liability insurance against claims arising out of or resulting from the acts or omissions of the Concessioner or its employees, agents or contractors, in carrying out the activities and operations required and/or authorized under this Contract.

(2) This insurance shall be in the amount commensurate with the degree of risk and the scope and size of the activities required and/or authorized under this Contract, as more specifically set forth in Exhibit F. Furthermore, the commercial general liability package shall provide no less than the coverages and limits described in Exhibit F.

(3) All liability policies shall specify that the insurance company shall have no right of subrogation against the United States of America and shall provide that the United States of America is named an additional insured.

(4) From time to time, as conditions in the insurance industry warrant, the Director may modify Exhibit F to revise the minimum required limits or to require additional types of insurance, provided that any additional requirements must be reasonable and consistent with the types of insurance a prudent businessperson would purchase in similar circumstances.

(d) Property Insurance

(1) In the event of damage or destruction, the Concessioner will repair or replace those Concession Facilities and personal property utilized by the Concessioner in the performance of the Concessioner's obligations under this Contract.

(2) For this purpose, the Concessioner shall provide fire and extended insurance coverage on Concession Facilities for all or part of their replacement cost as specified in Exhibit F in amounts no less than the Director may require during the term of the Contract. The minimum values currently in effect are set forth in Exhibit F.

(3) Commercial property insurance shall provide for the Concessioner and the United States of America to be named insured as their interests may appear.

(4) In the event of loss, the Concessioner shall use all proceeds of such insurance to repair, rebuild, restore or replace Concession Facilities and/or personal property utilized in the Concessioner's operations under this Contract, as directed by the Director. Policies may not contain provisions limiting insurance proceeds to in situ replacement. The lien provision of Section 12 shall apply to such insurance proceeds. The Concessioner shall not be relieved of its obligations under subsection (d)(1) because insurance proceeds are not sufficient to repair or replace damaged or destroyed property.

(5) Insurance policies that cover Concession Facilities shall contain a loss payable clause approved by the Director which requires insurance proceeds to be paid directly to the Concessioner without requiring endorsement by the United States, unless the damage exceeds \$1,000,000. The use of insurance proceeds for repair or replacement of Concession Facilities will not alter their character as properties of the United States and, notwithstanding any provision of this Contract to the contrary, the Concessioner shall gain no ownership, Leasehold Surrender Interest or other compensable interest as a result of the use of these insurance proceeds.

(6) The commercial property package shall include the coverages and amounts described in Exhibit F.

SEC. 12. BONDS AND LIENS

(a) Bonds

The Director may require the Concessioner to furnish appropriate forms of bonds in amounts reasonable in the circumstances and acceptable to the Director, in order to ensure faithful performance of the Concessioner's obligations under this Contract.

(b) Lien

As additional security for the faithful performance by the Concessioner of its obligations under this Contract, and the payment to the Government of all damages or claims that may result from the Concessioner's failure to observe any such obligations, the Government shall have at all times the first lien on all assets of the Concessioner within the Area, including, but not limited to, all personal property of the Concessioner used in performance of the Contract hereunder within the Area.

SEC. 13. ACCOUNTING RECORDS AND REPORTS

(a) Accounting System

(1) The Concessioner shall maintain an accounting system under which its accounts can be readily identified with its system of accounts classification. Such accounting system shall be capable of providing the information required by this Contract, including but not limited to the Concessioner's repair and maintenance obligations. The Concessioner's system of accounts classification shall be directly related to the Concessioner Annual Financial Report Form issued by the Director.

(2) If the Concessioner's annual gross receipts are \$250,000 or more, the Concessioner must use the accrual accounting method.

(3) In computing net profits for any purposes of this Contract, the Concessioner shall keep its accounts in such manner that there can be no diversion or concealment of profits or expenses in the operations authorized under this Contract by means of arrangements for the procurement of equipment, merchandise, supplies or services from sources controlled by or under common ownership with the Concessioner or by any other device.

(b) Annual Financial Report

(1) The Concessioner shall submit annually as soon as possible but not later than one hundred twenty (120) days after the last day of its fiscal year a financial statement for the preceding fiscal year or portion of a year as prescribed by the Director ("Concessioner Annual Financial Report").

(2) If the annual gross receipts of the Concessioner are in excess of \$1,000,000, the financial statements shall be audited by an independent Certified Public Accountant in accordance with Generally Accepted

Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(3) If annual gross receipts are between \$500,000, and \$1,000,000, the financial statements shall be reviewed by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(4) If annual gross receipts are less than \$500,000, the financial statements may be prepared without involvement by an independent Certified Public Accountant, unless otherwise directed by the Director.

(c) Other Financial Reports

Balance Sheet. Within ninety (90) days of the execution of this Contract or its effective date, whichever is later, the Concessioner shall submit to the Director a balance sheet as of the beginning date of the term of this Contract. The balance sheet shall be audited or reviewed, as determined by the annual gross receipts, by an independent Certified Public Accountant.

SEC. 14. OTHER REPORTING REQUIREMENTS

The following describes certain other reports required under this Contract:

(a) Insurance Certification

As specified in Section 11, the Concessioner shall, at the request of the Director, provide the Director with a Certificate of Insurance for all insurance coverages related to its operations under this Contract. The Concessioner shall give the Director immediate written notice of any material change in its insurance program, including without limitation, any cancellation of required insurance coverages.

(b) Environmental Reporting

The Concessioner shall submit environmental reports as specified in Section 6 of this Contract, and as otherwise required by the Director under the terms of this Contract.

(c) Miscellaneous Reports and Data

The Director from time to time may require the Concessioner to submit other reports and data regarding its performance under the Contract or otherwise, including, but not limited to, operational information.

SEC. 15. SUSPENSION, TERMINATION, OR EXPIRATION

(a) Suspension

The Director may temporarily suspend operations under this Contract in whole or in part in order to protect Area visitors or to protect, conserve and preserve Area resources. No compensation of any nature shall be due the Concessioner by the Director in the event of a suspension of operations, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the suspension.

(b) Termination

(1) The Director may terminate this Contract at any time in order to protect Area visitors, protect, conserve, and preserve Area resources, or to limit visitor services in the Area to those that continue to be necessary and appropriate.

(2) The Director may terminate this Contract if the Director determines that the Concessioner has materially breached any requirement of this Contract, including, but not limited to, the requirement to maintain and operate visitor services to the satisfaction of the Director, the requirement to provide only those visitor services required or authorized by the Director pursuant to this Contract, the requirement to pay the established franchise fee, the requirement to prepare and comply with an Environmental Management Program and the requirement to comply with Applicable Laws.

(3) In the event of a breach of the Contract, the Director will provide the Concessioner an opportunity to cure by providing written notice to the Concessioner of the breach. In the event of a monetary breach, the Director will give the Concessioner a fifteen (15) day period to cure the breach. If the breach is not cured within that period, then the Director may terminate the Contract for default. In the event of a nonmonetary breach, if the Director considers that the nature of the breach so permits, the Director will give the Concessioner thirty (30) days to cure the breach, or to provide a plan, to the satisfaction of the Director, to cure the breach over a specified period of time. If the breach is not cured within this specified period of time, the Director may terminate the Contract for default. Notwithstanding this provision, repeated breaches (two or more) of the same nature shall be grounds for termination for default without a cure period. In the event of a breach of any nature, the Director may suspend the Concessioner's operations as appropriate in accordance with Section 15(a).

(4) The Director may terminate this Contract upon the filing or the execution of a petition in bankruptcy by or against the Concessioner, a petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, an assignment by the Concessioner for the benefit of creditors, a petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this Contract or any part thereof upon execution, attachment or other process of law or equity. The Director may terminate this Contract if the Director determines that the Concessioner is unable to perform the terms of Contract due to bankruptcy or insolvency.

(5) Termination of this Contract for any reason shall be by written notice to the Concessioner.

(c) Notice of Bankruptcy or Insolvency

The Concessioner must give the Director immediate notice (within five (5) days) after the filing of any petition in bankruptcy, filing any petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, or making any assignment for the benefit of creditors. The Concessioner must also give the Director immediate notice of any petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this Contract or any part thereof upon execution, attachment or other process of law or equity. For purposes of the bankruptcy statutes, NPS considers that this Contract is not a lease but an executory contract exempt from inclusion in assets of Concessioner pursuant to 11 U.S.C. 365.

(d) Requirements in the Event of Termination or Expiration

(1) In the event of termination of this Contract for any reason or expiration of this Contract, no compensation of any nature shall be due the Concessioner in the event of a termination or expiration of this Contract, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the termination.

(2) Upon termination of this Contract for any reason, or upon its expiration, and except as otherwise provided in this section, the Concessioner shall, at the Concessioner's expense, promptly vacate the Area, remove all of the Concessioner's personal property, repair any injury occasioned by installation or removal of such property, and ensure that Concession Facilities are in at least as good condition as they were at the beginning of the term of this Contract, reasonable wear and tear excepted. The removal of such personal property must occur within thirty (30) days after the termination of this Contract for any

reason or its expiration (unless the Director in particular circumstances requires immediate removal). No compensation is due the Concessioner from the Director or a successor concessioner for the Concessioner's personal property used in operations under this Contract. However, the Director or a successor concessioner may purchase such personal property from the Concessioner subject to mutually agreed upon terms. Personal property not removed from the Area by the Concessioner in accordance with the terms of this Contract shall be considered abandoned property subject to disposition by the Director, at full cost and expense of the Concessioner, in accordance with Applicable Laws. Any cost or expense incurred by the Director as a result of such disposition may be offset from any amounts owed to the Concessioner by the Director to the extent consistent with Applicable Laws.

(3) To avoid interruption of services to the public upon termination of this Contract for any reason, or upon its expiration, the Concessioner, upon the request of the Director, shall consent to the use by another operator of the Concessioner's personal property, excluding inventories if any, not including current or intangible assets, for a period of time not to exceed one (1) year from the date of such termination or expiration. The other operator shall pay the Concessioner an annual fee for use of such property, prorated for the period of use, in the amount of the annual depreciation of such property, plus a return on the book value of such property equal to the prime lending rate, as published by the Federal Reserve System Board of Governors, effective on the date the operator assumes managerial and operational responsibilities. In such circumstances, the method of depreciation applied shall be either straight line depreciation or depreciation as shown on the Concessioner's Federal income tax return, whichever is less. To avoid interruption of services to the public upon termination of this Contract for any reason or its expiration, the Concessioner shall, if requested by the Director, sell its existing inventory to another operator at the purchase price as shown on applicable invoices.

(4) Prior to and upon the expiration or termination of this Contract for any reason, and, in the event that the Concessioner is not to continue the operations authorized under this Contract after its expiration or termination, the Concessioner shall comply with all applicable requirements of Exhibit G to this Contract, "Transition to New Concessioner." This section and Exhibit G shall survive the expiration or termination of this Contract.

SEC. 16. ASSIGNMENT, SALE OR ENCUMBRANCE OF INTERESTS

(a) This Contract is subject to the requirements of Applicable Laws, including, without limitation, 36 CFR Part 51, with respect to proposed assignments and encumbrances, as those terms are defined by Applicable Laws. Failure by the Concessioner to comply with Applicable Laws is a material breach of this Contract for which the Director may terminate this Contract for default. The Director shall not be obliged to recognize any right of any person or entity to an interest in this Contract of any nature or operating rights under this Contract, if obtained in violation of Applicable Laws.

(b) The Concessioner shall advise any person(s) or entity proposing to enter into a transaction which may be subject to Applicable Laws, including without limitation, 36 CFR Part 51, of the requirements of Applicable Law and this Contract.

SEC. 17. GENERAL PROVISIONS

(a) The Director and Comptroller General of the United States, or any of their duly authorized representatives, shall have access to the records of the Concessioner as provided by the terms of Applicable Laws.

(b) All information required to be submitted to the Director by the Concessioner pursuant to this Contract is subject to public release by the Director to the extent provided by Applicable Laws.

(c) Subconcession or other third party agreements, including management agreements, for the provision of visitor services required and/or authorized under this Contract are not permitted.

- (d) The Concessioner is not entitled to be awarded or to have negotiating rights to any Federal procurement or service contract by virtue of any provision of this Contract.
- (e) Any and all taxes or assessments of any nature that may be lawfully imposed by any State or its political subdivisions upon the property or business of the Concessioner shall be paid promptly by the Concessioner.
- (f) No member of, or delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this Contract or to any benefit that may arise from this Contract but this restriction shall not be construed to extend to this Contract if made with a corporation or company for its general benefit.
- (g) This Contract is subject to the provisions of 2 C.F.R. Part.1400 as applicable, concerning nonprocurement debarment and suspension. The Director may recommend that the Concessioner be debarred or suspended in accordance with the requirements and procedures described in those regulations, as they are effective now or may be revised in the future.
- (h) This Contract contains the sole and entire agreement of the parties. No oral representations of any nature form the basis of or may amend this Contract. This Contract may be extended, renewed or amended only when agreed to in writing by the Director and the Concessioner.
- (i) This Contract does not grant rights or benefits of any nature to any third party.
- (j) The invalidity of a specific provision of this Contract shall not affect the validity of the remaining provisions of this Contract.
- (k) Waiver by the Director or the Concessioner of any breach of any of the terms of this Contract by the other party shall not be deemed to be a waiver or elimination of such term, nor of any subsequent breach of the same type, nor of any other term of the Contract. The subsequent acceptance of any payment of money or other performance required by this Contract shall not be deemed to be a waiver of any preceding breach of any term of the Contract.
- (l) Claims against the Director (to the extent subject to 28 U.S.C. 2514) arising from this Contract shall be forfeited to the Director by any person who corruptly practices or attempts to practice any fraud against the United States in the proof, statement, establishment, or allowance thereof within the meaning of 28 U.S.C. 2514.
- (m) Nothing contained in this Contract shall be construed as binding the Director to expend, in any fiscal year, any sum in excess of the appropriation made by Congress for that fiscal year or administratively allocated for the subject matter of this Contract, or to involve the Director in any contract or other obligation for the future expenditure of money in excess of such appropriations.

In Witness Whereof, the duly authorized representatives of the parties have executed this Contract on the dates shown below.

CONCESSIONER

By _____
 [Name of signer]
 Title: _____
 Concessioner

UNITED STATES OF AMERICA

By _____
 Jonathon B. Jarvis
 Director, National Park Service

DATE: _____, 20__

DATE: _____, 20__

DATE: _____, 20__

EXHIBIT A
OPERATING PLAN

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1) Introduction

This Operating Plan between [Concessioner Name] (hereinafter referred to as the “Concessioner”) and the National Park Service (hereinafter referred to as the “Service”) describes specific operating responsibilities of the Concessioner and the Service with regard to those lands and facilities within Rock Creek Park (hereinafter referred to as the “Area”) that are assigned to the Concessioner for the purposes authorized by the Contract.

In the event of any conflict between the terms of the Contract and this Operating Plan, the terms of the Contract, including its designations and amendments, will prevail.

This plan will be reviewed annually by the Superintendent in consultation with the Concessioner and revised as determined necessary by the Superintendent of the Area. Any revisions shall not be inconsistent with the main body of this Contract. Any revisions must be reasonable and in furtherance of the purposes of the Contract.

2) Management Responsibilities

A) Concessioner

- (1) To achieve an effective and efficient working relationship between the Concessioner and the Service, the Concessioner must designate an on-site general manager who:
 - (a) Has the authority and the managerial experience for operating the authorized Concession Facilities and services required under the Contract;
 - (b) Will employ a staff with the expertise and training necessary to operate all services authorized under the Contract;
 - (c) Has full authority to act as a liaison in all concession administrative and operational matters within the Area; and,
 - (d) Has the responsibility for implementing the policies and directives of the Service.
 - (e) Will designate an assistant manager or an acting “manager on duty” when the on-site general manager is absent.

B) Service

- (1) The Superintendent manages the Area with responsibility for all operations, including appropriate oversight of concession operations. The Superintendent carries out the policies and directives of the Service, including concession contract management. Directly, or through designated representatives, the Superintendent reviews, directs, and coordinates Concessioner activities relating to the Area. This includes:
 - (a) Evaluation of Concessioner services and Concession Facilities and related operations;
 - (b) Review and approval of rates charged for all services;
 - (c) Review and approval of construction and all improvements to Concession Facilities.

3) General operating standards and requirements

A) Season and Hours of Operation

- (1) Boat storage must be provided year-round.
- (2) Boat rental must be provided, at a minimum, from approximately April 1 through September 30, as river and weather conditions permit.
- (3) The minimum office hours will be from 9:00 AM to 5:00 PM daily from March 1 through September 30th. The Concessioner may close on Federal holidays. Any deviation from this schedule must be submitted as a request to the Superintendent.
- (4) If vending machines are provided, such machines will be provided year-round.

B) Rates

- (1) *Rate Determination.* All rates and charges to the public by the Concessioner must comply with the provisions of Section 3(e) of the Contract, including (without limitation) Section 3(e)'s requirements regarding approval by the Service of the rates and charges set. The reasonableness and appropriateness of rates and charges under this Contract shall be determined, unless and until a different rate determination is specified by the Service, using the methodologies set out below. As used in this Operating Plan, each of the specified methodologies has the same meaning as that set out in the most recent National Park Service Concession Management Rate Approval Guide ("Rate Approval Guide") (a copy which can be obtained by contacting the Service) as it may be amended, supplemented, or superseded throughout the term of this Operating Plan.
- (2) Approval of rates charged by the Concessioner must be based on comparability with other operations offering similar services and facilities in the private sector. Comparability studies will be conducted in accordance with Service guidelines. Selection of comparables is the responsibility of the Superintendent. The Concessioner is, however, permitted to assist in gathering information and data pertinent to selection of the comparables.
- (3) Comparables, once established, will not ordinarily be changed, unless significant changes occur to the operations of either the Concessioner or the comparable(s) which would deem the comparable inappropriate. Comparables will be reviewed upon each rate request submission.

C) Rate Approval Process

- (1) *Rate Changes.* Requests for rate approvals must be submitted prior to implementation. All rate increase requests must be in writing and in accordance with applicable Service policy and provide information to substantiate the requested rates in sufficient detail for the Service to be able to replicate results using methodology specified in the Rate Approval Guide. The Service will promptly approve, disapprove, or adjust rates, using its selected comparables, and will inform the Concessioner of the approved rates and the reason for any disapproval or adjustment.
- (2) *Approved Rate Posting.* The Concessioner must prominently post all rates for goods and services provided to the visiting public.
- (3) *Rate Compliance.* Rate compliance will be checked during periodic operational evaluations and throughout the year. Approved rates will remain in effect until superseded by written changes approved by the Service.

D) Evaluations and Inspections

- (1) The Service and the Concessioner must separately inspect and monitor Concession Facilities and services with respect to Service policy, applicable standards, authorized rates, safety, public health, fire safety, impacts on cultural and natural resources, correction of operating deficiencies, responsiveness to visitor comments, and compliance with the Contract including its Exhibits.
 - (a) Annual Overall Rating. The Service will determine and provide the Concessioner with an Annual Overall Rating on or around April 1 for the preceding calendar year. The Annual Overall Rating will include a Contract Compliance Report and rating and an Operational Performance Report and rating.
 - (b) Contract Compliance Report. The Contract Compliance Report and rating will consider such items as the timely submission of annual financial report, timely submission of proof of general liability, timely and accurate submission of franchise fees, and insurance.
 - (c) Operational Compliance Report. The Operational Compliance Report and rating will consider such things as the evaluation of the Concessioners Risk Management Program, Public Health Rating and Periodic Operational Evaluations.
 - (d) Risk Management Program Evaluation. The Service will annually conduct an evaluation of the Concessioner's Risk Management Program.

- (e) Safety Inspections. The Concessioner must perform periodic interior and exterior safety inspections of all Concession Facilities in accordance with its documented Risk Management Plan. The Concessioner must ensure employee compliance with health, fire, and safety code regulations as well as Service policy.
 - (f) Periodic Operational Evaluations. The Service will conduct both announced and unannounced periodic operational evaluations of concession services and Concession Facilities. The Service will evaluate concession services to ensure conformance with applicable operational standards. The Service will also evaluate the conformance of the Concession Facilities to the established Maintenance Plan. The Concessioner must be contacted at the time of these evaluations so that a representative of the Concessioner may accompany the evaluator.
 - (g) Concessioner Environmental Evaluations. The Concessioner must self-assess its performance under its Environmental Management Program (EMP) at least annually per Section 6(b) of the Contract. The Service may conduct environmental audits of Concession Facilities and operations based on the Service Environmental Audit Program.
- (2) The Concessioner must be required to close all periodic evaluation audit findings. The Concessioner must meet with Service officials to prioritize and schedule the correction of deficiencies and the implementation of improvement programs resulting from these inspections. The Concessioner must be responsible for correction of deficiencies and abatement plans within dates agreed to with the Service within the timeframe specified in the Environmental Audit Report.

E) Visitor Comments

- (1) The Concessioner must investigate and respond to all visitor complaints regarding its services within 10 business days of receipt. The Concessioner must provide a copy of the initial comment, its response, and any other supporting documentation to the Service by the 15th of each month for the previous month's activities.
- (2) The Concessioner must provide visitor comments that allege misconduct by Concessioner or Service employees, or that pertain to the safety of visitors or employees, or concern the safety of Area resources to the Superintendent immediately upon receipt.
- (3) The Service will forward to the Concessioner any comments and complaints received regarding Concession Facilities or services. The Concessioner must provide a copy of any responses to the Service, and the Service will copy any response it makes to the Concessioner.

F) Human Resources Management

- (1) *Employee Identification and Appearance.* The Concessioner must ensure that employees in direct contact with the general public wear personal nametags. All employees must be neat and clean in appearance and project a hospitable, positive, friendly and helpful attitude.
- (2) *Employee Conduct.* The Concessioner must review the conduct of any of its employees whose actions or activities are considered by the Service or Concessioner to be inconsistent with the proper administration of the Area and enjoyment and protection of visitors. The Concessioner must take all actions needed to fully correct any such situation. Concession staff must avoid engaging in controversial topics with guests while on duty. Concessioner expectation of employees should be clearly documented in writing.
- (3) *Employee List.* The Concessioner must submit to the Superintendent a list of the names, job titles, and contact information for all managers. This information will be provided to the Service by April 1st and updated when necessary.
- (4) *Employee Hiring Procedures*
 - (a) General Manager. The General Manager will have an appropriate background as a manager or administrator that indicates his or her ability to manage a boat rental business of this size.
 - (b) Staffing Requirements. The Concessioner must hire a sufficient number of employees to ensure high-quality visitor services throughout the operating season.

- (c) Work Schedule. The Concessioner must offer its employees a full workweek whenever possible. Prior to employment, the Concessioner must inform employees of salary, schedules, holiday pay, overtime requirements, and any possibility that less-than-full-time employment may occur during slow periods.
- (d) Background Checks. The Concessioner must ensure that comprehensive background checks are performed on all employee hires as appropriate to the position. These may include: wanted notices/warrants check; local criminal history checks; federal criminal records check; national multi-jurisdictional database and sexual offender search; social security number trace; and driving history check. No employee will be hired if they show any active wanted notices or warrants (current fugitive from justice).
- (e) Employment of Service employees or their family members. The Concessioner may not employ in any status the spouses and/or dependent children of a Rock Creek Park employee, without prior Superintendent written approval. The Concessioner may not employ in any status the spouses and/or dependent children of the Superintendent, Concessions Management staff, Safety Officer, or Public Health Service Consultant.
- (f) Drug-free Awareness and Testing Program. The Concessioner must provide its employees with a statement of its policies regarding drug and alcohol abuse, and conduct educational program(s) for its employees to deter drug and alcohol abuse. The Concessioner must establish an appropriate employee drug-testing program. Should the Concessioner become aware of illegal drug use or underage drinking, the Concessioner must promptly report it to the Service's Visitor Protection Staff.

(5) *Training*

- (a) The Concessioner must provide and maintain records of appropriate training as set forth below and will provide those records to the Service upon request.
 - (i) Safety. The Concessioner must train its employees annually in its Risk Management Program.
 - (ii) Environmental Training. The Concessioner must provide annual environmental awareness training to all employees on its Environmental Management Program.
 - (iii) Job Training. The Concessioner must provide appropriate job training to each employee prior to duty assignments and working with the public.
 - (iv) Customer Service. The Concessioner must provide customer service and hospitality training for employees who have direct visitor contact.
 - (v) Resource and Informational Training. The Concessioner must provide training for all employees who provide interpretive and safety information.
 - (vi) The Concessioner may request Service staff to present certain topics of interest.

G) Risk Management Program

- (1) The Concessioner must develop, maintain, and implement a Concessioner Risk Management Program that is in accordance with the Occupational Safety and Health Act and Director's Order #50B, Occupational Safety and Health Program. The Concessioner must submit its initial plan to the Superintendent within 60 days of effective date of the Contract and annually thereafter by February 1 of each year. The Concessioner must update its Concessioner Risk Management Program to comply with Applicable Laws.
- (2) The Risk Management Program must include, at a minimum, the following basic elements:
 - (a) Documented Program
 - (b) Inspections
 - (c) Deficiency Classification and Hazard Abatement Schedule
 - (d) Accident Reporting and Investigation
 - (e) Public Safety and Awareness Program
 - (f) Training
 - (g) Emergency Procedures

H) Environmental Management

- (1) The Concessioner must prepare an Environmental Management Program (“EMP”) in accordance with Section 6 of the Contract. The Concessioner must develop all plans and submit all reports as required by Applicable Laws.
- (2) The Concessioner must participate in the District of Columbia Clean Marina program.
- (3) The Concessioner must maintain up to date Best Management Procedures (BMP) on the handling of emergencies, hazardous materials, solid waste and recycling.
- (4) Receipts and records for the disposal of waste oil and batteries will be maintained by the Concessioner for a period of three years.
- (5) The Concessioner is responsible for reporting any hazardous material spills to the Coast Guard and the Superintendent.

I) Security and Protection

- (1) The Concessioner is responsible for securing buildings, equipment, and facilities under its control, and for providing and maintaining fire extinguishers, smoke detectors, and other safety and security devices as may be necessary.
- (2) The United States Park Police (202 619-7300) are responsible for law enforcement, public safety, and emergency response within the Rock Creek Park. Routine patrols may include the concession, but are not a substitute for Concessioner-provided security patrols.
- (3) The District of Columbia Fire Department is responsible for responding to all fires and medical emergencies within Rock Creek Park.
- (4) The Concessioner must immediately report any fires, medical emergencies, accidents, or other incidents to the United States Park Police dispatcher by calling (202) 619-7300.

J) Emergency Services

- (1) *Visitor Protection:* The Service provides primary visitor protection in conjunction with cooperative arrangements between the Service and associated local city, county, and state agencies.
- (2) *Fire Protection:* The Concessioner must ensure that all Concession Facilities meet all applicable Fire and Life Safety Codes and that fire detection and suppression equipment is in good operating condition at all times.
- (3) *Emergency Medical Care:* The Service, in conjunction with cooperative arrangements between the Service and associated local city, county, and state agencies, provides emergency medical care. Any injury sustained by a visitor or employee in a Concessioner facility should be reported promptly to the Service.
- (4) The Concessioner must provide adequate training and certification to all appropriate staff to respond to basic emergency medical needs including CPR. All reasonable efforts are to be made to see that an employee certified in basic first aid and CPR is on site during all scheduled operation hours and events.
- (5) *Human Illness Reporting.* Any suspected outbreak of human illness, whether amongst employees or visitors, must be reported immediately to the Service. A suspected outbreak of human illness is two or more persons with common symptoms that could be associated with contaminated water or food sources or other adverse environmental conditions.

K) Public Relations

- (1) *Required Notices.* The Concessioner must prominently post the following notice at all Concessioner cash registers and payment areas:

“This service is operated by (Concessioner’s name), a Concessioner under contract with the U.S. Government and administered by the National Park Service. The Concessioner is responsible for conducting these operations in a satisfactory manner. Prices are approved by the National Park Service. Please address comments to:

Superintendent

Rock Creek Park
3545 Williamsburg Lane, NW
Washington, DC 20008

- (2) *Public Statements.* All media inquiries concerning operations within the Area, questions about the Area, or concerning any incidents occurring within the Area must be forwarded to the Superintendent. This includes all requests for media interviews.

L) Advertisements and Promotional Material

- (1) *Approval.* The Concessioner must submit any new or updated promotional material, including websites, to the Service for review and approval at least 30 days prior to publication, distribution, broadcast, etc. The Superintendent may require the Concessioner to remove any unapproved promotional material. Promotional material distributed within the Area must promote only services and facilities within the Area, unless the Superintendent approves exceptions in writing.
- (2) *Authorization.* Advertisements must include a statement that the National Park Service and the Department of the Interior authorize the Concessioner to serve the public at the Rock Creek Park.
- (3) *Equal Opportunity.* Advertisements for employment must state that the company is an equal opportunity employer.
- (4) Boat sales or brokering on Service property is prohibited.
- (5) "For Sale" signs are not permitted on boats.

M) Lost and Found

- (1) Unattended or found items which are discovered by or turned over to the Concessioner are to be subsequently turned over to the United States Park Police District Sub-station (D-3) if not claimed by a visitor within 24 hours.

N) General Policies

- (1) Concession Facilities may not be used for activities or services that do not directly and exclusively support contractual services authorized by the Contract without written permission from the Service.
- (2) *Smoking Policy.* All buildings within the Concession Facilities are designated as non-smoking.
- (3) *Credit Cards.* Major credit cards must be honored. The Concessioner may accept debit cards at its discretion or at the direction of the Superintendent.

4) Specific Operating Standards and Requirements

A) Non-motorized Boat Rental

- (1) *Boat condition.* Rental boats must be inspected prior to each rental to ensure they are free from defects that could lead to visitor injury, that there are no apparent leaks, and that the boat is in a safe operating condition. Rental boats must be maintained to the manufacturers specifications. Boats not meeting these criteria must be secured in the boat racks or removed from the Area until they are safe to operate.
- (2) *Rental Agreements.* The Concessioner must execute written rental agreements, conforming to applicable legal requirements, for each boat rental. The rental form must be approved by the Superintendent prior to adoption and use.
- (3) *Rental Registers.* The Concessioner shall maintain accurate, up-to-date registers of boat renters.
- (4) *Safety Briefing*
 - (a) The Concessioner is responsible for ensuring that the renting operator is capable of handling the boat being rented. Prior to releasing the boat to the visitor, the Concessioner must give specific written and verbal (hands-on) operating instructions to the operator to assure that they are aware of any problems which may arise while the boat is being

rented. Instructions and information should include the boat and its equipment to include the proper use of PFDs, emergency procedures, navigation, regulations concerning restricted areas and weather conditions.

(b) All vessels must carry the required and appropriate safety equipment.

(5) *Personal Flotation Device (PFD)*

(a) All boats must have one U.S. Coast Guard (USCG) approved Type III or higher personal flotation devices for each vessel occupant.

(b) PFDs must be maintained in a serviceable condition, legibly marked with the USCG approval number, and an appropriate size (within the weight range and chest sizes marked on the PFDs). The Concessioner must remove from use PFDs that are badly stained, torn, or have loose or missing straps.

(c) The Concessioner must visually inspect PFDs for correct count and serviceability. The Concessioner must remove from use any defective PFDs and will replace such with a like type and size.

(d) The Concessioner must store the PFDs in a location where they will not become stained, torn, or used for purposes other than lifesaving.

B) Dry storage of non-motorized vehicles

(1) Dry boat storage will be on a first come, first served basis. Boat storage is limited to the space available within the boat storage racks.

(2) The Concession must maintain a waitlist for future availability.

(3) The Concessioner must ensure visitors secure their boats to the rack to prevent unauthorized use.

C) Utilities

(1) Utility services will be obtained by the Concessioner from commercial sources at its own expense.

D) Authorized Services

The following requirements are for authorized services, if offered.

(1) *Vending.*

(a) Vending will only include the sale of water and non-alcoholic beverages.

(b) Vending machines will be conveniently located, and of a design and color which complements the aesthetics of the building and surroundings. The Superintendent will approve the type and location of all vending machines.

(c) Machines will be clean, properly stocked, and in good working condition.

(d) Signage on the machine may relate to Area resource education themes or will be generic in nature.

(e) Beverage container deposit/recycling information will be posted on the machine.

(f) Brand information will only be visible when at the machine.

(g) Machines will have passive infrared sensors to power down lights when not in use to conserve energy.

(2) *Instruction*

(a) Non-motorized vessel use instruction is an authorized service, ex. kayak, canoe, and stand-up paddleboarding.

(b) The nature, scope, and scale of non-motorized vessel use instruction is subject to prior approval of the Superintendent, Rock Creek Park.

5) Reporting Requirements

A) Concessioner Operational Reports

- (1) The Service and/or its representatives will be allowed to inspect supporting documentation for all operational reports upon request.
- (2) *Operational and Financial Reports*
- (a) Monthly use statistics. The following operational statistics must be provided monthly by the 15th of each month of operation unless otherwise agreed upon by the Superintendent. This data will be presented in a concise spreadsheet format. The Service may request additional information regarding services, trends, etc., during the life of this Contract.

Number of Dry Storage Renters	
Number of Kayak Rentals	
Number of Canoe Rentals	
Number of Stand-up Paddle Boards	
Gross Revenue	

- (b) As renewed, the Concessioner must provide a copy of all operating permits, licenses and certifications.
- (c) Any inspection reports conducted by outside agencies (i.e., fire department, OSHA, etc.) must be submitted to the Superintendent within fourteen (14) calendar days.
- (d) Monthly Franchise Fee Report. The Concessioner must report on the franchise fee deposit made from the preceding month. Reporting documentation will include a copy of the check or wire transfer identifying the account and the amount.

EXHIBIT B**NONDISCRIMINATION****SEC. 1 REQUIREMENTS RELATING TO EMPLOYMENT AND SERVICE TO THE PUBLIC****(a) Employment**

During the performance of this Contract the Concessioner agrees as follows:

(1) The Concessioner will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, or disabling condition. The Concessioner will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, or disabling condition. Such action shall include, but not be limited to, the following: Employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessioner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Secretary setting forth the provision of this nondiscrimination clause.

(2) The Concessioner will, in all solicitations or advertisements for employees placed by on behalf of the Concessioner, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, national origin, or disabling condition.

(3) The Concessioner will send to each labor union or representative of workers with which the Concessioner has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Secretary, advising the labor union or workers' representative of the Concessioner's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) Within 120 days of the commencement of a contract every Government contractor or subcontractor holding a contract that generates gross receipts which exceed \$50,000 and having 50 or more employees shall prepare and maintain an affirmative action program at each establishment which shall set forth the contractor's policies, practices, and procedures in accordance with the affirmative action program requirement.

(5) The Concessioner will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Concessioner will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Concessioner's books, records, and accounts by the Secretary of the Interior and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Concessioner's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated or suspended in whole or in part and the Concessioner may be declared ineligible for further Government concession contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Concessioner will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The Concessioner will take such action with respect to any subcontract or purchase order as the Secretary may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Concessioner becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Secretary, the Concessioner may request the United States to enter into such litigation to protect the interests of the United States.

(b) Construction, Repair, and Similar Contracts

The preceding provisions a(1) through a(8) governing performance of work under this Contract, as set out in Section 202 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, shall be applicable to this Contract, and shall be included in all contracts executed by the Concessioner for the performance of construction, repair, and similar work contemplated by this Contract, and for that purpose the term "Contract" shall be deemed to refer to this instrument and to contracts awarded by the Concessioner and the term "Concessioner" shall be deemed to refer to the Concessioner and to contractors awarded contracts by the Concessioner.

(c) Facilities

(1) Definitions: As used herein:

- (i) Concessioner shall mean the Concessioner and its employees, agents, lessees, sublessees, and contractors, and the successors in interest of the Concessioner;
- (ii) Facility shall mean any and all services, facilities, privileges, accommodations, or activities available to the general public and permitted by this agreement.

(2) The Concessioner is prohibited from:

- (i) publicizing facilities operated hereunder in any manner that would directly or inferentially reflect upon or question the acceptability of any person because of race, color, religion, sex, age, national origin, or disabling condition;
- (ii) discriminating by segregation or other means against any person.

SEC. 2 ACCESSIBILITY

Title V, Section 504, of the Rehabilitation Act of 1973, as amended in 1978, requires that action be taken to assure that any "program" or "service" being provided to the general public be provided to the highest extent reasonably possible to individuals who are mobility impaired, hearing impaired, and visually impaired. It does not require architectural access to every building or facility, but only that the service or program can be provided somewhere in an accessible location. It also allows for a wide range of methods and techniques for achieving the intent of the law, and calls for consultation with disabled persons in determining what is reasonable and feasible.

No handicapped person shall, because a Concessioner's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance or conducted by any Executive agency or by the U.S. Postal Service.

(a) Discrimination Prohibited

A Concessioner, in providing any aid, benefit, or service, may not directly or through contractual, licensing, or other arrangements, on the basis of handicap:

- (1) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;
- (2) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
- (3) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;
- (4) Provide different or separate aids, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;
- (5) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;
- (6) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or
- (7) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(b) Existing Facilities

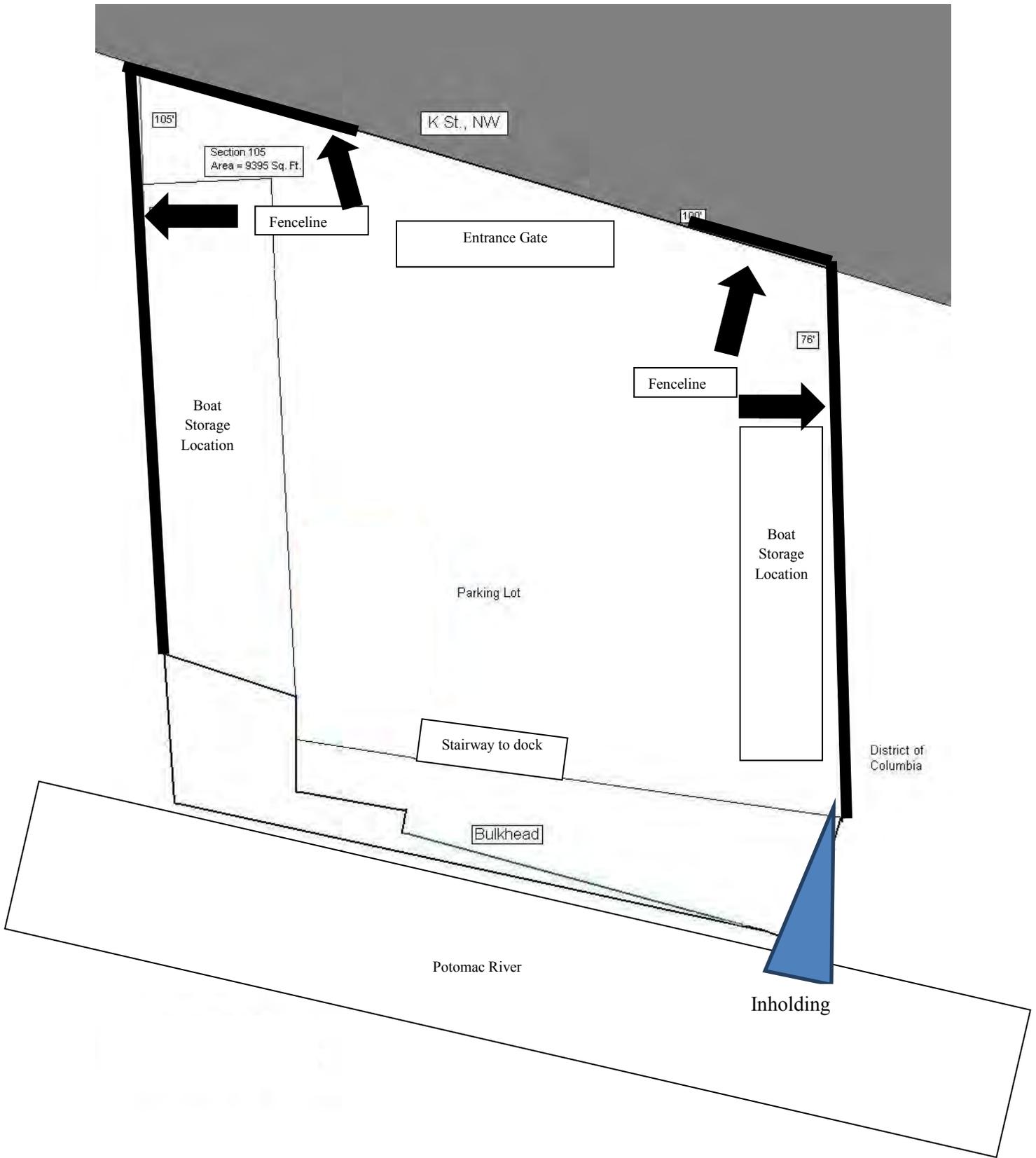
A Concessioner shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not require a Concessioner to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

EXHIBIT C

**ASSIGNED LAND AND REAL PROPERTY IMPROVEMENTS
(CONCESSION FACILITIES)**

Land Assigned

Land is assigned in accordance with the boundaries shown on the following map[s]:



Real Property Improvements Assigned

The following real property improvements are assigned to the concessioner for use in conducting its operations under this Contract:

Bulkhead- Deck

Approved, effective _____, 20____

By: _____
Jonathan B. Jarvis
Director, National Park Service

EXHIBIT D

ASSIGNED GOVERNMENT PERSONAL PROPERTY

Government personal property is assigned to the Concessioner for the purposes of this Contract as follows:

None.

Approved, effective _____, 20____

By: _____
Jonathan B. Jarvis
Director, National Park Service

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EXHIBIT E MAINTENANCE PLAN

INTRODUCTION

This Maintenance Plan between “concessioner” (hereinafter referred to as the “Concessioner”) and the National Park Service (hereinafter referred to as the “Service”) sets forth the Maintenance responsibilities of the Concessioner and the Service with regard to those lands and facilities within Rock Creek Park (hereinafter referred to as the “Area”) that are assigned to the Concessioner for the purposes authorized by the Contract. In the event of any apparent conflict between the terms of the Contract and this Maintenance Plan, the terms of the Contract, including its designations and amendments, will prevail. Full compliance with the requirements of this Maintenance Plan is required in order to satisfy the Concessioner’s Maintenance obligations under the terms of the Contract, including, without limitation, Component Renewal as defined below.

This plan will remain in effect until superseded or amended. It will be reviewed annually by the Superintendent in consultation with the Concessioner and revised as determined necessary by the Superintendent of the Area. Revisions may not be inconsistent with the terms and conditions of the main body of the Contract. Any revisions must be reasonable and in furtherance of the purposes of this Contract.

PART A - GENERAL

1) General Concession Facilities Standards

Pursuant to the Contract, the Concessioner is solely responsible for the Maintenance of all Concession Facilities to the satisfaction of the Service. Compliance with the terms of this Maintenance Plan is required for this purpose.

The Concessioner must conduct all Maintenance activities in compliance with Applicable Laws. Applicable Laws include, but are not limited to Service standards, Department of the Interior and National Park Service Asset Management Plans, NPS Management Policies, manufacturer recommendations and specifications and those otherwise defined in the Contract.

2) Definitions

In addition to the defined terms contained or referenced in the Contract, the following definitions apply to this Maintenance Plan.

Asset – Real Property that the Service desires to track and manage as a distinct identifiable entity. It may be a physical structure or grouping of structures, land features, or other tangible property that has a specific service or function such as an office building, lodge, motel, cabin, residence, campground, marina, etc.

Capital Improvement - A Capital Improvement is a structure, fixture, or non-removable equipment provided by the Concessioner pursuant to the terms of this Contract.

Component – A portion of an Asset or system.

Component Renewal/Replacement (CR) – The planned Replacement of a Component at the end of its Useful Life. Component Renewal/Replacement examples include the replacement of roofs; electrical distribution systems; heating and cooling systems; pavement replacement for roads, parking lots and walkways; and the rehabilitation of windows and/or replacement of windows and doors. Component Renewal/Replacement includes the deconstruction of the existing Component and Replacement with a new Component of equal capability and performance. These actions recur on a periodic cycle of greater than seven years.

Concession Facilities - Concession Facilities, as defined in the main body of the Contract, are all Area lands assigned to the Concessioner under the Contract and all real property improvements assigned to the Concessioner under the Contract.

Contract – The agreement (as it may be amended from time to time) to which this Maintenance Plan is attached, including all attachments, exhibits or incorporated provisions of the agreement.

Deferred Maintenance (DM) – Maintenance that was not timely or properly conducted. Continued Deferred Maintenance will result in Deficiencies.

Deficiencies – Defects in an Asset or Component that results when Maintenance is not performed in a timely manner. Deficiencies may not have immediately observable physical consequences, but when allowed to accumulate uncorrected, lead to deterioration of performance, loss of Asset value, or both.

Environmentally Preferable - Products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, productions, manufacturing, packaging, distributions, reuse, operations, maintenance, or disposal of a product or service. Product considerations include, but are not limited to, the environmental impacts of the product's manufacture, product toxicity, and product recycled content including post consumer material, amount of product packaging, energy or water conserving features of the product, product recyclability and biodegradability. These include those products for which standards have been established for federal agency facilities and operations.

Facility Operations – Operational actions performed by the Concessioner on a recurring basis that meet daily operational needs of Concession Facilities. Typical work performed under Facility Operations includes janitorial and custodial services, snow removal, operation of utilities, and grounds keeping. Certain Facility Operations requirements may be included in Exhibit A (Operating Plan) to the Contract.

Feasible - The ability to provide the equipment, materials or procedures that are required because they are technically possible, economically reasonable, appropriate for the location and the use identified, and consistent with industry best management practices.

Hazardous Substance – Any hazardous waste, hazardous chemical or hazardous material as defined under 40 C.F.R. pt. 261, 29 C.F.R. 1910.1200, or 40 C.F.R. pt. 171, respectively.

Hazardous Waste - Any waste defined as such under 40 CFR 261 – 265.

Maintenance – The maintenance of Concession Facilities as described in this Maintenance Plan. Maintenance includes, but is not limited to, actions taken under the following maintenance categories: Component Renewal/Replacement; Recurring Maintenance; Facility Operations; Preventive Maintenance; and Repair.

Personal Property – Manufactured items of independent form and utility including equipment and objects solely for use by the Concessioner to conduct business. Personal Property includes, without limitation, removable equipment, furniture and goods, necessary for Concessioner operations under the Contract. Personal Property may be Government assigned property.

Preventive Maintenance – Planned, scheduled periodic maintenance activities performed weekly, monthly, quarterly, semi-annually, or annually on selected Assets or Components, typically including, but not limited to, inspection, lubrication, and adjustment.

Recurring Maintenance – Planned work activities that reoccur on a periodic cycle of greater than one year to sustain the useful life of an Asset or Component. Typical projects include, but are not limited to painting, pump and motor replacement, cleaning, repair and replacement of lighting, engine overhaul, replacement of carpeting, and refinishing hardwood floors.

Repair – Work undertaken to restore damaged or worn out Assets or Components to a fully functional operating condition.

Replacement – Exchange or substitution of one Asset or Component for another that has the capacity to perform the same function at a level of utility and service equivalent to the original Asset or Component.

Solid Waste - Discarded household and business items such as product packaging, grass clippings and other green waste, furniture, clothing, bottles, food scraps, newspapers, white goods and other appliances. It is more commonly referred to as trash, garbage, litter, or rubbish. The term “solid waste,” as used in this Maintenance Plan, does not include sewage, septic sludge, hazardous waste, universal waste and miscellaneous maintenance wastes such as used oil, tires and lead-acid batteries.

Sustainable Design - Design that applies the principles of ecology, economics, and ethics to the business of creating necessary and appropriate places for people to visit, live in or work. Development that has a sustainable, design sits lightly on the land, demonstrates resource efficiency, and promotes ecological restoration and integrity, thus improving the environment, the economy and society.

Sustainable Practices/Principles - Those choices/decisions, actions and ethics that will best achieve ecological/biological integrity; protect qualities and functions of air, water, soil, and other aspects of the natural environment; and preservation of human cultures. Sustainable practices allow for use and enjoyment by the current generation, while ensuring that future generations will have the same opportunities.

Useful Life – The serviceable life of an Asset or Component.

Universal Waste – Any waste as defined under 40 CFR § 273. These include but are not limited to mercury-containing equipment such as thermostats, lamps such as fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium and metal halide lamps, cathode ray tubes (CRTs) from computers and televisions, nickel-cadmium and sealed lead-acid batteries and waste pesticides.

Waste Prevention - Any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials.

Waste Reduction - Preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

3) Concessioner Responsibilities

A) In General

- 1) *The Concessioner must undertake Maintenance of Concession Facilities to the satisfaction of the Service, including, without limitation, compliance with the requirements of this Maintenance Plan.*
- 2) *All Maintenance must be undertaken in accordance with Applicable Laws, including without limitation, applicable building and safety codes. All personnel conducting Maintenance must have the appropriate skills, experience, licenses and certifications to conduct such work.*
- 3) *The Concessioner, where applicable, must submit project plans to the Service that are stamped by a Professional Engineer or Registered Architect licensed in the applicable State.*
- 4) *The Concessioner, where applicable, must obtain the appropriate permits required by State or local law, U.S. Environmental Protection Agency, and other regulatory agencies and provide copies of the permits to the Service.*
- 5) *The Concessioner must conduct Maintenance activities in a manner that, to extent feasible, minimizes environmental impact and utilizes principles of preventive maintenance, waste prevention and reduction, sustainable design and sustainable practices/principles and incorporates best management practices.*
- 6) *The Concessioner must comply with the Americans with Disabilities Act and the Architectural Barriers Act guidelines where applicable.*
- 7) *The Concessioner will not construct or install Capital Improvements.*
- 8) *The Concessioner may perform emergency repairs without prior Service approval as long as appropriate documentation follows within one business day.*

B) Environmental, Historic, and Cultural Compliance.

- 1) Certain Maintenance actions may be subject to compliance procedures under the National Environmental Policy Act (NEPA), National Historic Preservation Act (NHPA), and other laws as part of a planning process that allows the Service to ensure that all Concessioner activities meet the requirements of Applicable Laws for natural and cultural resource protection.
- 2) The Service in cooperation with the Concessioner will determine what environmental compliance with the above legal requirements may be required for particular Maintenance actions. Note that this does not apply to compliance requirements outside the planning process which are wholly the responsibility of the Concessioner.
- 3) Any proposed Maintenance actions that require review under these procedures must be submitted to the Superintendent by the Concessioner in the format required.
- 4) The Concessioner may be required to prepare an environmental assessment, environmental impact statement, or related documents at its expense for certain Maintenance actions. The Service will advise the Concessioner on proper process and procedure.

4) This section has been deleted.

5) Concessioner Inspections

The Concessioner must conduct annual inspections of Concession Facilities to determine compliance with this Maintenance Plan and to develop future Maintenance requirements.

6) Annual Concessioner Maintenance Plan (ACMP).

The Concessioner must provide the Service on an annual basis (for Service review and approval) a proposed Annual Concessioner Maintenance Plan for the next calendar year applicable to all Concession Facilities. The Concessioner must deliver the proposed revised ACMP to the Superintendent on or before October 1 of each year. The ACMP must include the following information.

A) Maintenance Action Information.

The ACMP must include the following Maintenance action information:

- 1) Preventive Maintenance (PM). The proposed ACMP must include PM actions, procedures and schedules that ensure proper Preventive Maintenance of all Concession Facilities. At a minimum, the PM actions, procedures and schedules must include summary procedures for each Asset, including, but not limited to, roofs, building envelopes, and mechanical equipment.

- 2) Recurring Maintenance. The ACMP must include Recurring Maintenance actions, procedures and schedules for Recurring Maintenance to be performed.
- 3) Scheduled Repair. The proposed ACMP must include actions, plans and procedures for scheduled Repair of Concession Facilities.
- 4) Unscheduled Repair. The ACMP must include a service call procedure and method to prioritize service calls for unscheduled Repairs.
- 5) Component Renewal/Replacement. The proposed ACMP must include actions, plans and procedures for Component Renewal/Replacement.
- 6) A description of the Deferred Maintenance (and any resulting Deficiencies) that are to be cured under the terms of the proposed ACMP.
- 7) Inspection plans and procedures that demonstrate how the Concessioner will oversee the conduct of Maintenance during the next calendar year.

B) Projected Maintenance Expenditures.

The ACMP must also include the Concessioner's estimated expenditures associated with the proposed ACMP, including, without limitation, a breakout of labor, materials, contracted services, and indirect costs on an Asset basis applicable to each maintenance category set forth above

7) Annual Concessioner Maintenance Reporting (ACMR)

The Concessioner must provide the Service with an Annual Maintenance Report that covers all Concession Facilities and presents the Maintenance accomplished during the previous calendar year. The Concessioner must deliver the report to the Superintendent on or before February 1 of each year. The ACMR must include the following elements

A) Maintenance Actions.

The ACMR must include a summary of all Maintenance actions by applicable Asset and Maintenance category that were completed in the previous calendar year, including, without limitation, actions to cure Deferred Maintenance (and any resulting Deficiencies).

B) Maintenance Expenditures.

The ACMR must include the Concessioner's expenditures associated with Maintenance by applicable Asset and Maintenance category for the previous calendar year, including, without limitation, expenditures to cure Deferred Maintenance (and any resulting Deficiencies).

8) Personal Property Report

The Concessioner must provide the Service with a planned personal property replacement, rehabilitation, and repair schedule for the next calendar year annually by October 1 for review and approval of the Service. The plan must include the specifications, item description, estimated date of replacement, estimated replacement cost, expected life of replacement property, and expected salvage value of replaced personal property at time of replacement.

9) Service Responsibilities

Nothing in this Maintenance Plan will be construed as requiring the Service to conduct Maintenance of Concession Facilities of any kind except as otherwise expressly stated by the terms of this Maintenance Plan. Part B of this Maintenance Plan may describe certain Service responsibilities for particular elements of Maintenance of Concession Facilities.

A) Service Inspections

The Service from time to time (as determined necessary by the Service but no less than annually) will inspect the condition of Concession Facilities and the progress and quality of Maintenance activities. The Concessioner must provide qualified personnel to accompany the Service when Concession Facilities inspection is performed.

B) Evaluation of Concessioner Maintenance

The Service will provide the Concessioner with an annual evaluation of Concession Facilities. The evaluation will be based, among other matters, on the application of the National Park Service Facility Condition Standards during facility inspection. The evaluation will be provided to the Concessioner as a record of Concession Facilities condition documenting the Concessioner's compliance with its obligation to perform all necessary maintenance, including, without limitation, Annual Concessioner Maintenance Plan (ACMP) actions. The findings and results of the evaluation will become part of the basis of evaluating Concessioner performance under the "NPS Concessioner Annual Overall Rating" program.

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PART B – SERVICE REQUIRED CONCESSIONER RESPONSIBILITIES

1) Concessioner Responsibilities**B) Office Structure**

- (3) *The Concessioner must maintain and repair its personal property structure in good condition including all interior and exterior surfaces. Unless required more frequently per the manufacturer's recommendations, the structure must be painted or stained on a regular cycle of three years, unless written Service approval is given to postpone the activity. The Concessioner must obtain prior written approval from the Service for any changes to interior and exterior finishes from the color range or types of materials currently in use on the structure.*
- (4) *The Concessioner must provide and maintain in a serviceable condition all interior safety equipment, such as smoke detectors, fire extinguishers, and other appurtenances as necessary for the protection of the public and the Concession Facilities.*

C) Grounds and Landscaping

- (1) *The Concessioner must keep all grounds within the Concession Facilities well maintained, properly illuminated, uncluttered, and free of litter and debris. Vegetation - The Concessioner must perform all mowing, weeding, trimming, watering, and other activities related to turf and vegetation care. The Concessioner must request prior written approval from the Service for the use of any chemicals, fertilizer, pesticides, or herbicides prior to use.*
- (2) *Landscaping Changes - The Concessioner must request prior written approval from the Service for any proposed landscaping work that will change, alter, or modify the grounds .*

D) Roads, Parking Areas and Walkways

- (1) *The Concessioner must maintain all walkways within the Concession Facilities in good condition.*
- (2) *The Concessioner must keep all roads, parking areas, and walkways within the Concession Facilities in good condition including sweeping, , erosion control, and snow removal (the latter only if snow occurs during Concessioner's operating season).. All walking surfaces, including roads and parking areas, must be clean and swept free of debris, obstacles, or other hazards.*

E) Docks, Ramps, and other Marina Facilities

- (1) *The Concessioner must maintain the dock surface, flotation, and ramps in good repair, level, properly positioned, and secured. Docks must be sturdy, free of large cracks, uneven or broken planks, etc. The Concession must maintain the railings in good repair and sturdy enough to support visitor use.*

F) Signs

- A. *The Concessioner must install, maintain, and replace all interior and exterior signs relating to its operations and services within the Concession Facilities. Examples of this responsibility are signs identifying the location of functions (when attached to Concession Facilities or on grounds assigned to the Concessioner), signs identifying operating services and hours, and signs identifying the Concessioner's rules or policies.*
- (2) *The Concessioner must ensure signage is appropriately located, accurate, attractive and well maintained. The Concessioner must replace any signs that have been defaced or removed within seven days. Signs that address a life safety issue must be replaced immediately with a professional looking temporary sign pending the permanent replacement within seven days.*
- (3) *The Concessioner must ensure that its signs comply with Service sign standards including but, not limited to, Director's Order 52, Park Signage. The Concessioner must submit plans for all new sign installations to the Service for approval before installation. The Concessioner must not use handwritten or typed signs within Concession Facilities without written Service approval.*

G) Utilities

Electrical: The Concessioner must maintain all electrical lines and equipment and all fixtures, including street lamps, within the Concession Facilities. The Concessioner must ensure that all electrical circuits under its control meet or exceed the standards of the National Electric Code.

All electrical work or rewiring of existing facilities must be inspected at the Concessioner's expense, and the inspector must certify to the Service that the installation meets code.

2) **Service Responsibilities**

H) **Landscaping and Grounds**

(1) *The Service trims trees and removes hazardous trees.*

I) **Signs**

(1) *The Service provides and maintains regulatory, traffic control, or information signs that serve the interest of the Service; examples include information signs along roadways, directional signs along trails, and interpretive signing.*

3) **Reporting Requirements**

The following chart summarizes the plan and reporting dates established by Parts A, B and C of this Maintenance Plan.

Report or Plan	Schedule	Due Date
Part A – Annual Concessioner Maintenance Plan (ACMP)	Annual	October 1
Part A – Annual Concessioner Maintenance Reporting (ACMR)	Annual	February 1
Personal Property Report	Annual	October 1

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PART C – CONCESSIONER ENVIRONMENTAL RESPONSIBILITIES

1) General

The following Concessioner environmental responsibilities are specified for Maintenance.

- A) Concessioner responsibilities provided in Part B may provide more specific and/or additional environmental requirements. When in conflict, responsibilities described in Part B supersede those identified in this part.

2) Air Quality

- A) The Concessioner must minimize impacts to air quality in Maintenance under this Contract through the use of appropriate control equipment and practices.
- B) The Concessioner must not use halon fire suppression systems except as permitted by the Service.

3) Environmentally Preferable Products, Materials and Equipment

- A) The Concessioner must use products, materials and equipment that are Environmentally Preferable where feasible in maintenance. Environmentally preferable maintenance related products, materials and equipment include but are not limited to re-refined oils, re-tread tires, bio-based lubricants, low-toxicity cleaners and chemical additives for toilets, low-toxicity and recycled antifreeze, safe alternatives to ozone-depleting substances for HVAC equipment, construction and building materials with recycled content, and alternative fuel vehicles.
- B) The Concessioner must use polystyrene as little as possible and may not use polystyrene that contains chlorofluorocarbons.

4) Hazardous Substances

- A) The Concessioner must minimize the use of Hazardous Substances for Maintenance purposes under this Contract where feasible.
- B) The Concessioner must provide secondary containment for Hazardous Substances storage where there is a reasonable potential for discharge to the environment. At a minimum, the Concessioner must provide secondary containment for Hazardous Substances located in outside storage areas, in interior storage areas in the proximity of exterior doorways or floor drains, on docks and on vessels.
- C) The Concessioner must provide an inventory of Hazardous Substances to the Service annually in accordance with Section 6(d)(1) of the Contract by March 1. The inventory must identify each substance, location and amounts stored.

5) Hazardous, Universal and Other Miscellaneous Maintenance Wastes

- A) The Concessioner must minimize the generation of Hazardous Waste, Universal Waste and miscellaneous maintenance waste where feasible.
- B) The Concessioner must recycle Hazardous Waste, Universal Waste, and miscellaneous maintenance wastes, where feasible, including but not limited to, used oil, used oil contaminated with refrigerant, used solvents, used antifreeze, paints, used batteries, and used fluorescent lamps (including CFLs).
- C) Concessioner must obtain approval from the Service for hazardous, universal, and miscellaneous maintenance waste storage area siting and designs.
- D) If the Concessioner is a conditionally exempt small quantity generator (CESQG) as defined in federal regulations, it must follow small quantity generator (SQG) regulations related to container labeling,

storage, accumulation times, use of designated disposal facilities, contingency planning, training, and recordkeeping.

- E) The Concessioner must manage Universal Waste (i.e., storage, labeling, employee training, and disposal) in accordance with federal Universal Waste regulations irrespective of Hazardous Waste generator status.

6) **Pest Management**

The Concessioner must conduct any pesticide management activities in accordance with NPS Integrated Pest Management (IPM) procedures contained in NPS 77 and the Park IPM Plan. These procedures include but are not limited to Superintendent approval before the use of any chemical pesticides by the Concessioner or its contractor, proper pesticide storage, application and disposal, and pesticide use reporting.

7) **Solid Waste**

Litter Abatement

- (1) The Concessioner must develop, promote and implement a litter abatement program and provide litter free messages on appropriate materials and in appropriate locations.
- (2) The Concessioner must keep all Concession Facilities free of litter, debris, and abandoned equipment, vehicles, furniture, and fixtures.

Solid Waste Storage and Collection and Disposal

- (1) The Concessioner is responsible for providing, at its own expense, an effective system for the collection, storage and disposal of Solid Waste generated by its facilities and services as well as the Solid Waste generated by the visiting public at its facilities.
- (2) To prevent pest attraction and breeding, all Solid Waste from the Concessioner's operations must be adequately bagged, tied and stored in sealed containers.
- (3) Solid Waste collection and disposal must be conducted on a schedule approved by the Service, at a rate as necessary to prevent the accumulation of waste.
- (4) Solid Waste that is not recycled must be properly disposed at an authorized sanitary landfill or transfer station.

Solid Waste Receptacles

- (1) The Concessioner must locate its Solid Waste containers (i.e., cans, "roll-off" containers/dumpsters, etc.) conveniently and in sufficient quantity to handle the needs of its operations. The Concessioner must not allow waste to accumulate in containers to the point of overflowing.
- (2) Outdoor receptacles must be waterproof, vermin-proof, and covered with working lids. Indoor receptacles should be similarly constructed based on use (i.e., food waste versus office trash).
- (3) The Concessioner must keep its receptacles clean, well maintained, painted in Service-approved colors, and serviceable; containers must be clearly signed; sites must be free of spills, waste, and odors. All Solid Waste containers must remain closed when containers are not in use.
- (4) Concessioner bulk Solid Waste storage/accumulation facilities must be screened from the public.

Solid Waste Source Reduction and Recycling

- (1) The Concessioner must implement a source reduction program designed to minimize its use of disposable products in its operations. Purchase and reuse of materials is encouraged where feasible as the first choice in source reduction.

- (2) The Concessioner is encouraged to reuse materials where allowable under Applicable Laws where the collection of the materials must not present public health, safety or environmental concerns. Opportunities include the reuse of retail product packaging.
- (3) The Concessioner must develop, promote and implement a recycling program that fully supports the efforts of the Service for all Rock Creek Park specified materials. These may include but may not be limited to paper, newsprint, cardboard, bimetals, plastics, aluminum and glass. It may also include large items such as computers and other electronics, white goods and other bulky items and others.
- (4) The Concessioner must make recycling receptacles available to the public and Concession employees.
- (5) Recycling containers must be waterproof, vermin-proof and covered with working lids as necessary to maintain the quality of the recyclables for market and to prevent vermin from being attracted to the recycling containers. Containers must be clearly signed; sites must be free of spills, waste, and odors. It is encouraged that lids are provided with openings or holes sized to limit the types of materials deposited and to minimize contamination in recycling containers.
- (6) The Concessioner must remove all recyclables from the Area and transport them to an authorized recycling center. The Concessioner may contract with an independent vendor, with the approval of the Service, to provide recycling services.

Composting

- (1) The Concessioner must use Solid Waste composting as a waste management method if feasible.
- (2) The Concessioner composting system must be animal-proof and Service-approved.

8) Water and Energy Efficiency

- A) The Concessioner must consider water and energy efficiency in all facility management practices and integrate water-conserving and energy conserving measures whenever feasible.
- B) In addition to meeting standards established in accordance with Applicable Laws, Concession Facilities equipment and practices must be consistent with water and energy efficiency standards established for federal facilities and operations where feasible.
- C) As new technologies are developed, the Concessioner must assess these opportunities and integrate them into existing operations where feasible and there is the potential for increased efficiency, reduced water or energy consumption, or reduced impacts on the environment.

9) Wastewater

- A) The Concessioner must minimize impacts to water quality in maintenance under this contract through the use of appropriate control equipment and practices.
- B) The Concessioner must prevent discharges to the sanitary sewer system that could result in pass through of contaminate or that could interfere with the operation of the sanitary wastewater treatment system.
- C) The Concessioner must maintain assigned wastewater treatment systems (i.e., oil-water separators, grease traps) on a frequency adequate to ensure proper operation to maintain wastewater quality. The Concessioner must maintain maintenance log for this wastewater treatment equipment which must be made available to the Service upon request.
- D) The Concessioner must minimize the storage of equipment and materials on the Assigned Facilities in a manner that would cause storm water contamination (i.e., storage outside without weather protection).

EXHIBIT F

INSURANCE REQUIREMENTS

SEC. 1. INSURANCE REQUIREMENTS

The Concessioner shall obtain and maintain during the entire term of this Contract, at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of the Contract. No act of the Concessioner, its agents, servants, or employees may impair any and all insurance coverage provided for the benefit of, or evidenced to the Service. The Concessioner must ensure that its insurance carriers provide the Service, solely for the benefit of the Service, **an unconditional 30 days advance notice** of cancellation in coverage or policy terms for all property insurance. Concessioners must provide the Service with a 30-day notice of cancellation on all liability and workers' compensation insurance policies.

The amounts of insurance, limits of liability, and coverage terms included are not intended as a limitation of the Concessioner's responsibility or liability under the Contract, but rather an indication as to the minimum types, amounts, and scope of insurance that the Service considers necessary to allow the operation of the concession at the Area. Nevertheless, if the Concessioner purchases insurance in addition to the limits set forth herein, the Service will receive the benefit of the additional amounts of insurance without additional cost to the Service.

SEC. 2. LIABILITY INSURANCE

The Concessioner must maintain the following minimum Liability Coverages, all of which, unless noted herein, are to be written on an occurrence form of coverage. The Concessioner may attain the limits specified below by means of supplementing the respective coverage(s) with Excess or "Umbrella" liability as explained below.

(a) Commercial General Liability

- (1) The Concessioner must obtain coverage for bodily injury, property damage, contractual liability, personal, advertising injury liability and products, and completed operations liability. The Concessioner must provide the following minimum limits of liability:

General Aggregate	\$2,000,000
Products and Completed Operations Aggregate	\$2,000,000
Per Occurrence	\$1,000,000
Personal & Advertising Injury Liability	\$1,000,000
Medical Payments	\$5,000
Damage to Premises Rented to You	\$5,000

- (2) The liability coverages may not contain the following exclusions/limitations:

- Athletic or Sports Participants
- Products/Completed Operations
- Personal & Advertising Injury exclusion or limitation
- Contractual Liability
- Explosion, Collapse and Underground Property Damage exclusion
- Total Pollution exclusion
- Watercraft limitations affecting the use of watercraft in the course of the Concessioner's operations (unless separate Watercraft coverage is maintained)

- (3) Pollution liability insurance coverage must be included for injuries resulting from smoke, fumes, vapor, or soot, or other contaminants arising from equipment used to heat the building or from a hostile fire.
- (4) If the policy insures more than one location, the General Aggregate limit must be amended to apply separately to each location.

(b) Automobile Liability

The Concessioner must provide coverage for bodily injury and property damage arising out of the ownership, maintenance or use of “any auto,” Symbol 1, including garage operations for products and completed operations. Garagekeepers’ liability is to be included on a “direct” basis for all Concessioner operations handling, parking or storing automobiles owned by others for a fee. Where there are no owned autos, coverage will be provided for “hired” and “non-owned” autos, “Symbols 8 & 9.”

Combined Single Limit Each Accident	\$1,000,000
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(c) Liquor Liability (not applicable)

The Concessioner must provide coverage for bodily injury and property damage including damages for care, loss of services, or loss of support arising out of the selling, serving, or furnishing of any alcoholic beverage.

Each Common Cause Limit	\$
Aggregate Limit	\$

(d) Watercraft Liability (or Protection & Indemnity) (not applicable)

The Concessioner must provide coverage for bodily injury and property damage arising out of the use of any watercraft.

Each Occurrence Limit	\$
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Marina liability shall be maintained at the same Each Occurrence Limit if the Concessioner operates a marina, and tower’s liability shall be maintained at the same Each Occurrence Limit if the Concessioner tows or transports non-owned vessels by water.

(e) Marina Operator’s Legal Liability

Coverage will be provided for damage to property in the care, custody or control of the Concessioner.

Any One Loss	\$60,000
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(f) Aircraft Liability (not applicable)

The Concessioner must provide coverage for bodily injury (including passengers) and property damage arising out of the use of any aircraft.

Each Person Limit	\$
Property Damage Limit	\$
Each Accident Limit	\$

The Concessioner must maintain airport liability insurance at a limit of at least \$ _____ if the Concessioner maintains landing facilities for use by third parties. Hangerkeeper’s liability shall be maintained at a limit sufficient to cover the maximum estimated value of non-owned aircraft in the Concessioner’s care, custody or control if the Concessioner provides aircraft storage to third parties.

(g) Garage Liability (not applicable)

This coverage is required for any operations in which the Concessioner services, handles or repairs automobiles owned by third parties. Coverage will be provided for bodily injury, property damage, personal or advertising injury liability arising out of garage operations (including products/completed operations and contractual liability) as well as bodily injury and property damage arising out of the use of automobiles.

Each Accident Limit - Garage Operations (Other than Covered Autos)	\$
Aggregate Limit-Garage Operations	\$
Covered Auto Limit (each accident)	\$
Garagekeepers' Liability	\$
Personal Injury Protection (or equivalent no-fault coverage)	\$
Uninsured Motorists	\$
Personal & Advertising Injury Limit	\$
Fire Legal Liability "per fire"	\$

If owned vehicles are involved, liability coverage should be applicable to "any auto" ("Symbol 21"), otherwise coverage applicable to "hired" and "non-owned" autos ("Symbols 28 & 29") should be maintained.

(h) Excess Liability or "Umbrella" Liability

The Concessioner is not required to provide Excess Liability or "Umbrella" liability coverage, but may use it to supplement any insurance policies obtained to meet the minimum requirements of the Contract. If maintained, the Concessioner will provide coverage for bodily injury, property damage, personal injury, or advertising injury liability in excess of scheduled underlying insurance. In addition, coverage must be at least as broad as that provided by underlying insurance policies and the limits of underlying insurance must be sufficient to prevent any gap between such minimum limits and the attachment point of the coverage afforded under the Excess Liability or "Umbrella" Liability policy.

The Concessioner may use an Excess or "Umbrella" liability policy to achieve the Commercial General Liability and automobile liability limits set forth above. If a lower limit of liability is used for a subordinate policy, however, then the limit of liability under the excess policy must be in an amount to achieve the minimum limit of liability required for the subject policy.

(i) Care, Custody and Control--Legal Liability, i.e. Innkeeper's Liability (not applicable)

Coverage will be provided for damage to property in the care, custody or control of the concessioner.

Any one Guest	\$
Any One Loss	\$

(j) Professional Liability, e.g. doctors, barbers and hairdressers (not applicable)

The Concessioner must maintain, or cause professionals working on its behalf to maintain, professional liability insurance for all professional services provided by or on behalf of the Concessioner.

Each Occurrence Limit	\$
Aggregate Limit	\$

(k) Environmental Impairment Liability (not applicable)

The Concessioner will provide coverage for bodily injury and property damage arising out of pollutants or contaminants on-site and offsite and clean-up.

Each Occurrence or Each Claim Limit	\$
Aggregate Limit	\$

(l) Special Provisions for Use of Aggregate Policies

The General Aggregate under the Commercial General Liability policy must apply on a “per location” basis. The Certificate of Insurance required herein will note compliance with this aggregate provision.

(m) Deductibles/Self-Insured Retentions

The Concessioner’s self-insured retentions or deductibles on any of the above described Liability insurance policies (other than Umbrella Liability, Environmental Impairment Liability or Professional Liability, if maintained) may not exceed \$5,000 without the prior written approval of the Director. Deductibles or retentions on Umbrella Liability, Environmental Impairment Liability and Professional Liability may be up to \$25,000.

(n) Workers’ Compensation and Employers’ Liability

The Concessioner must obtain coverage that complies with the statutory requirements of the state(s) in which the Concessioner operates. The Employer’s Liability limit will not be less than \$1,000,000. If Concessioner operations are conducted in proximity to navigable waters, United States Longshore and Harbor Workers’ Compensation Act coverage must be endorsed onto the workers’ compensation policy. If the Concessioner’s operations include use of watercraft on navigable waters, a maritime coverage endorsement must be added to the workers’ compensation policy, unless coverage for captain and crew is provided in a Protection & Indemnity policy.

SEC. 3. PROPERTY INSURANCE

(a) Building(s) and Contents Coverage

Amount of insurance (buildings): Full replacement value as listed in Exhibit C without deduction.

Amount of insurance (contents): Full replacement value without deduction.

Amount of insurance (inventory): Full replacement value without deduction.

- (1) Insurance shall cover buildings, structures, improvements & betterments, and contents for all Concession Facilities, as more specifically described in Exhibit C of this Contract.
- (2) Coverage shall apply on an “All Risks” or “Special Coverage” basis and shall include coverage for earthquake damage.
- (3) The policy shall provide for loss recovery on a Replacement value basis without deduction.
- (4) The amount of insurance must represent no less than 100% of the Replacement Cost value of the insured property. The Concessioner must insure inventory for 100% of the replacement cost of the products held for sale.
- (5) The coinsurance provision, if any, shall be waived or suspended by an Agreed Amount clause.
- (6) Coverage is to be provided on a blanket basis for real and personal property.

- (7) The vacancy restriction and unoccupied restriction, if any, must be eliminated for all property that will be vacant beyond any vacancy or unoccupied time period specified in the policy.
- (8) Flood Coverage (if applicable) must be maintained at least at the maximum limit available in the National Flood Insurance Program (NFIP) or the total replacement cost of the property, whichever is less.
- (9) Earthquake Coverage (if applicable) must be maintained at the maximum limit available not to exceed 100% replacement value, without deduction.
- (10) Ordinance or law, demolition, and increased cost of construction. Coverage shall be maintained with a limit of not less than 20% of the building replacement costs listed in Exhibit C, each for the increased cost of construction and for the cost to replace the undamaged portion of a building ordered torn down by the appropriate authorities.

(b) Boiler & Machinery/Equipment Breakdown Coverage

- (1) Insurance shall apply on the comprehensive basis of coverage including all objects within the Concession Facilities.
- (2) The policy shall provide a limit at least equal to the full replacement cost for all covered objects in the highest valued Concession Facilities location, plus 20% on a replacement cost basis.
- (3) No coinsurance clause shall apply.
- (4) Coverage is to be provided on a blanket basis.
- (5) If insurance is written with a different insurer than the Building(s) and Contents insurance, both the Property and Boiler insurance policies must be endorsed with a joint loss agreement.
- (6) Ordinance or law, demolition, and increased cost of construction coverage shall be maintained.

(c) Inland Marine Coverage

- (1) Insurance shall apply to all boats, office trailers, equipment, storage racks and docks owned or rented by the insured, unless otherwise covered by building and contents coverage or provided for as part of a watercraft, or protection & indemnity liability policy.
- (2) Coverage shall apply to direct damage to covered property.
- (3) Flood and earthquake coverage shall be maintained.
- (4) Coverage shall be maintained while covered property is in transit or away from the insured's premises.
- (5) No coinsurance clause shall apply.

(d) Builders Risk Coverage

- (1) Insurance shall cover buildings or structures under construction pursuant to the terms of the Contract and include coverage for property that has or will become a part of the project while such property is at the project site, at temporary off-site storage, and while in transit. Coverage also must apply to temporary structures such as scaffolding and construction forms.
- (2) Coverage shall apply on an "All Risks" or "Special Coverage" basis.
- (3) The policy shall provide for loss recovery on a Replacement cost basis.

- (4) The amount of insurance should represent no less than 100% of the Replacement value of the property in the process of construction.
- (5) No coinsurance clause shall apply.
- (6) Any occupancy restriction must be eliminated.
- (7) Any collapse exclusion must be eliminated.

(e) Business Interruption and/or Expense

Business Interruption insurance and extra expense insurance covers the loss of income and continuation of fixed expenses in the event of damage to or loss of any or all of the Concession Facilities. Extra Expense insurance covers the extra expenses above normal operating expenses to continue operations in the event of damage or loss to covered property. Business Interruption insurance is required on all property policies, and boiler and machinery policies. The minimum coverage provided must be calculated by the Concessioner as follows:

Anticipated annual gross revenue from operations	\$ _____
Less non-continuing expenses	(\$ _____)
Annual Total	\$ _____
Divided by 12	\$ _____
Times the number of months estimated to rebuild or repair the Concession Facilities	\$ _____
Minimum Coverage	\$ _____

(f) Deductibles

Property Insurance coverages described above may be subject to deductibles as follows:

- (1) Direct Damage deductibles shall not exceed the lesser of 10% of the amount of insurance or \$50,000 (except Flood & Earthquake coverage may be subject to deductibles not exceeding 5% of the property value for flood, windstorm and earthquake).
- (2) Extra Expense deductibles (when coverage is not combined with Business Interruption) shall not exceed \$50,000.

(g) Required Clauses

- (1) Loss Payable Clause: A loss payable clause, similar to the following, must be added to Buildings and Contents, Boiler and Machinery, and Builders Risk policies:

“In accordance with Concession Contract No. ___ dated ___, between the United States of America and [the Concessioner] payment of insurance proceeds resulting from damage or loss of structures insured under this policy is to be disbursed directly to the Concessioner without requiring endorsement by the United States of America, unless the damage exceeds \$1,000,000.”

SEC. 4. CONSTRUCTION PROJECT INSURANCE

Concessioners entering into contracts with outside contractors for various construction projects, including major renovation projects, rehabilitation projects, additions or new structures must ensure that all contractors retained for such work maintain an insurance program that adequately covers the construction project.

The insurance maintained by the construction and construction-related contractors shall comply with the insurance requirements stated in the Contract including this Exhibit (for Commercial General Liability, Automobile Liability, Workers' Compensation and, if professional services are involved, Professional Liability). Except for workers' compensation insurance, the interests of the Concessioner and the United States shall be covered in the same fashion as required in the Commercial Operator Insurance Requirements. The amounts and limits of the required coverages shall be determined in consultation with the Director taking into consideration the scope and size of the project.

SEC. 5. INSURANCE COMPANY MINIMUM STANDARDS

All insurance companies providing the above described insurance coverages must meet the minimum standards set forth below:

- (1) All insurers for all coverages must be rated no lower than A- by the most recent edition of Best's Key Rating Guide (Property-Casualty edition), unless otherwise authorized by the Service.
- (2) All insurers for all coverages must have a Best's Financial Size Category of at least VII according to the most recent edition of Best's Key Rating Guide (Property-Casualty edition), unless otherwise authorized by the Service.

SEC. 6. THIRD PARTY VENDOR INSURANCE

Concessioners entering into contracts with third party vendors for various services or activities that the Concessioner is not capable of providing or conducting, must ensure that all vendors retained for such work maintain an insurance program that adequately covers the activity and complies with all the requirements applicable to the vendor's own insurance.

SEC. 7. CERTIFICATES OF INSURANCE

All certificates of insurance required by this Contract shall be completed in sufficient detail to allow easy identification of the coverages, limits, and coverage amendments that are described above. In addition, the insurance companies must be accurately listed along with their A.M. Best Identification Number ("AMB#"). The name, address, and telephone number of the issuing insurance agent or broker must be clearly shown on the certificate of insurance as well.

Due to the space limitations of most standard certificates of insurance, it is expected that an addendum will be attached to the appropriate certificate(s) in order to provide the space needed to show the required information.

In addition to providing certificates of insurance, the Concessioner, upon written request of the Director, shall provide the Director with a complete copy of any of the insurance policies (and all endorsements thereto) required herein to be maintained by the Contract including this Exhibit.

The certificate of insurance shall contain a notation by the Concessioner's insurance representative that the insurance coverage represented therein complies with the provisions of the Contract, including this Exhibit.

SEC. 8. STATUTORY LIMITS

In the event that a statutorily required limit exceeds a limit required herein, the Concessioner must maintain the higher statutorily required limit, which shall be considered as the minimum to be maintained. In the event that the statutorily required limit is less than the limits required herein, the limits required herein apply.

EXHIBIT G
TRANSITION TO A NEW CONCESSIONER

SEC 1. GENERAL

The Director and the Concessioner hereby agree that, in the event of the expiration or termination of this Contract for any reason (hereinafter "Termination" for purposes of this Exhibit) and the Concessioner is not to continue the operations authorized under this Contract after the Termination Date, the Director and the Concessioner in good faith will fully cooperate with one another and with the new concessioner or concessioners selected by the Director to continue such operations ("New Concessioner" for purposes of this exhibit), to achieve an orderly transition of operations in order to avoid disruption of services to Area visitors and minimize transition expenses.

SEC. 2. COOPERATION PRIOR TO THE TERMINATION DATE

At such time as the Director may notify the Concessioner that it will not continue its operations upon the Termination of this Contract, the Concessioner, notwithstanding such notification, shall undertake the following tasks.

(a) Continue Operations

The Concessioner shall continue to provide visitor services and otherwise comply with the terms of the Contract in the ordinary course of business and endeavor to meet the same standards of service and quality that were being provided previously with a view to maintaining customer satisfaction.

(b) Continue Bookings

(1) The Concessioner shall continue to accept all future bookings for any hotel, lodging facilities, or other facilities and services for which advance reservations are taken. The Concessioner shall not divert any bookings to other facilities managed or owned by the Concessioner or any affiliate of the Concessioner. The Concessioner shall notify all guests with bookings for any period after the Termination Date that the New Concessioner will operate the facilities and services.

(2) Promptly following notification to the Concessioner by the Director of the selection of the New Concessioner, the Concessioner shall provide the New Concessioner with a copy of Concessioner's reservation log for visitor services as of the last day of the month prior to the selection of the New Concessioner. The Concessioner thereafter shall update such log on a periodic basis (but no less frequently than 30 days) until the Termination Date. The reservation log shall include, without limitation, the name of each guest, and the guest's address, contact information, dates of stay, rate quoted, amount of advance deposit received, and confirmation number, if applicable.

(c) Designating a Point of Contact and Other Actions

(1) The Concessioner shall designate one of the Concessioner's executives as the point of contact for communications between the Concessioner and the New Concessioner.

(2) The Concessioner shall provide the New Concessioner with access to all Concession Facilities, including "back-of-house areas." The Concessioner also shall provide the New Concessioner copies of the keys to all Concession Facilities.

(3) The Concessioner shall provide the Director and the New Concessioner full access to the books and records, licenses, and all other materials pertaining to all Concession Facilities and the Concessioner's operations in general.

(4) The Concessioner shall provide the Director and the New Concessioner with copies of all maintenance agreements, equipment leases (including short-wave radio), service contracts, and supply contracts, including contracts for on-order merchandise (collectively “contracts”), and copies of all liquor licenses and other licenses and permits (collectively “licenses”).

(5) The Concessioner shall allow the New Concessioner to solicit and interview for employment all of the concessioner’s salaried and hourly employees, including seasonal employees, through a coordinated process implemented by the Concessioner.

(6) The Concessioner shall not enter into any contracts or agreements that would be binding on any Concession Facilities or concession operations in general after the Termination Date without the prior written agreement of the New Concessioner.

(d) Financial Reports

Within 30 days after receipt of the notification of the selection of the New Concessioner, the Concessioner shall provide the New Concessioner with a financial report with respect to the operation of the Concession Facilities and the Concessioner’s operations in general as of the last day of the month prior to receipt of such notification. The Concessioner, thereafter, shall update such financial report on a periodic basis (but no less frequently than 30 days) until the Termination Date. Such financial report shall include, at a minimum: a balance sheet for the Concession Facilities, if any; a schedule of pending accounts payable; and a schedule of pending accounts receivable.

(e) Personal Property List

The Concessioner shall provide the New Concessioner with a complete, detailed, and well-organized list of physical inventory, supplies, and other personal property owned or leased by the Concessioner in connection with its operations under the Contract (including a list of such items that are on order). The Concessioner must provide the list to the New Concessioner within 30 days following receipt of the notification of the selection of the New Concessioner. The Concessioner, thereafter, shall update the list on a monthly basis. The Concessioner shall designate those items that the Concessioner believes are essential to maintaining the continuity of operations or the special character of the concession operations. The Concessioner shall assist the New Concessioner in reviewing and validating the list.

(f) Other Information and Reports

The Concessioner shall provide the New Concessioner with all other information and reports as would be helpful in facilitating the transition, including, without limitation, a list of maintenance records for the Concessioner’s operations for the period of one year prior to notification of the selection of the New Concessioner. The Concessioner must also provide complete information on the following to the New Concessioner: utilities, including gas and electric; telephone service; water service; and specific opening and closing procedures. The Concessioner must provide all such information within 30 days after receipt of notification of the selection of the New Concessioner and update the information periodically (but no less frequently than 30 days) until the Termination Date.

(g) Other Cooperation

The Concessioner shall provide the Director and the New Concessioner with such other cooperation as reasonably may be requested.

SEC. 3. COOPERATION UPON THE TERMINATION DATE

Upon the Termination Date, the Concessioner shall undertake the following activities.

(a) Transfer of Contracts and Licenses

The Concessioner shall cooperate with the transfer or assignment of all contracts and licenses entered into by the Concessioner that the New Concessioner elects to assume.

(b) Reservation Systems

The Concessioner shall cooperate with the transfer of reservation information by:

- (i) Providing the New Concessioner with an update of the reservation log through the Termination Date;
- (ii) Disconnecting its operations from the Concessioner's centralized reservation system, if any; and
- (iii) Assisting the New Concessioner in transitioning to the New Concessioner's reservation system.

(c) Fees and Payments

No later than 10 days after the Termination Date, the Concessioner shall provide the Director with an itemized statement of all fees and payments due to the Director under the terms of the Contract as of the Termination Date, including, without limitation, all deferred, accrued, and unpaid fees and charges. The Concessioner, within 10 days of its delivery to the Director of this itemized statement, shall pay such fees and payments to the Director. The Concessioner and the Director acknowledge that adjustments may be required because of information that was not available at the time of the statement.

(d) Access to Records

The Concessioner shall make available to the Director for the Director's collection, retention, and use, copies of all books, records, licenses, permits, and other information in the Concessioner's possession or control that in the opinion of the Director are related to or necessary for orderly and continued operations of the related facilities and services, notwithstanding any other provision of this Contract to the contrary.

(e) Removal of Marks

The Concessioner shall remove (with no compensation to Concessioner) all items of inventory and supplies as may be marked with any trade name or trademark belonging to the Concessioner within 30 days after Termination.

(f) Other Cooperation

The Concessioner shall provide the Director and the New Concessioner with such other cooperation as reasonably may be requested.